



## STANISLAUS COUNTY FISH AND WILDLIFE COMMITTEE

3800 CORNUCOPIA WAY, SUITE C, MODESTO, CALIFORNIA 95358



**THURSDAY, January 26, 2017**

**Meeting Time: 4:00 P.M.**

**Location: DER Conference Room, 3800 Cornucopia Way, Ste. C, Modesto (Stanislaus Building - 2nd floor)**

### **AGENDA**

#### **Call Meeting to Order & Introductions:**

The Stanislaus County *Fish & Wildlife Committee (F&WC)* encourages public participation and welcomes the public's interest.

Members of the public may be heard on any item of the Fish and Wildlife Committee's agenda. A person addressing the Committee will be limited to five (5) minutes, unless the Chairperson of the Committee grants a longer period of time. The Committee will allow comments by members of the public on an agenda item only during consideration of the item.

#### **Requests for Funds & Project Updates:**

1. Project Update from Stanislaus County Parks and Recreation.
2. Approval of the request for funds from the U.S. Army Corp of Engineers in the amount not to exceed \$2,675.00 to purchase fish for the annual Kids Fishing Fun Day on Saturday, May 6, 2017.
3. Project Update for the Stanislaus River Salmon Festival.

#### **Correspondence:**

1. Notice of Amended Initial Statement of Reasons for Regulatory Action dated November 9, 2016.
  2. Notice of Findings regarding Livermore tarplant (*Deinandra baccigalupii*) which will be published in the California Regulatory Notice Register on November 4, 2016.
  3. Notice of proposed regulatory action relating to use of dogs in pursuit and take of mammals dated November 18, 2016.
  4. Notice of Final Consideration regarding flat-tailed horned lizard on November 18, 2016.
  5. Notice of Proposed Emergency Abalone Take Reduction Due to Harmful Environmental Conditions dated December 8, 2016.
  6. Notice of Use of Dogs for pursuit dated December 9, 2016.
  7. Notice of Findings regarding the petition to list coast yellow leptosiphon as endangered dated December 14, 2016.
  8. Notice of proposed regulatory action relating to listing Livermore tarplant as endangered dated December 14, 2016.
  9. Notice of proposed action relating to deer tagging and reporting dated December 23, 2016.
  10. Notice of proposed action relating to mammal regulations dated December 23, 2016.
  11. Notice of proposed action relating to waterfowl regulations dated December 23, 2016.
  12. Notice of availability of a document added to the rulemaking regarding California Spiny Lobster Fishery Management Plan dated December 19, 2016.
  13. Notice of proposed regulatory action relating to Lower Klamath River Basin dated December 28, 2016.
  14. Notice of proposed regulatory action relating to ocean salmon sport fishing (1 of 2) dated December 28, 2016.
- (continued – page 2)

**Correspondence (continued):**

15. Notice of proposed regulatory action relating to ocean salmon sport fishing (2 of 2) dated December 28, 2016.
16. Notice of proposed regulatory action relating to Pacific halibut sport fishing dated December 28, 2016.
17. Notice of Receipt of Petition to list foothill yellow-legged frog (*Rana boylei*) as threatened under California Endangered Species Act.
18. Notice of proposed regulatory action relative to subsection (b)(5) of Section 7.5, title 14, California Code of Regulations, relating to Central Valley salmon sport fishing.

**Agenda Items:**

1. Public Comment(s)
2. Approval of October 27, 2016 Meeting Minutes
3. Wildlife Management Report
4. Fishery Report
5. Wildlife Enforcement Report
6. Wood Duck Report
7. Approval to review, discuss and finalize changes on the Committee's Fund Procedures (Section 8)
8. Old Business
9. Committee Comments

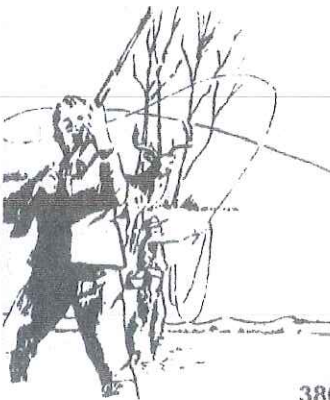
FW Members  
Cristen Langner, DFG  
Steve Tsao, DFG  
Phil McKay, DFG

**Adjourn: Next meeting – Thursday, April 27, 2017 at 4:00 p.m.**

*Please notify the Department of Parks and Recreation at 525-6770 in advance if you will be attending this meeting and/or require special accommodation for the meeting.*

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**REASONABLE ACCOMMODATIONS:** In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Committee Secretary at (209) 525-6770. Notification 72 hours prior to the meeting will enable the Department to make reasonable arrangements to ensure accessibility to this meeting. Agendas can also be found online at <http://www.stancounty.com/parks/fish-wildlife-committee.shtm> subject to staff's ability to post prior to the meeting. Materials related to an item on this Agenda submitted to the Committee after distribution of the agenda packet are available for public inspection during normal business hours at the main office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, CA 95358.



# STANISLAUS COUNTY

## FISH AND WILDLIFE COMMITTEE



### PARKS AND RECREATION

Jami Aggers, Director  
Merry Mayhew, Asst. Director  
Ed Ayers, Chair

3800 CORNUCOPIA WAY, SUITE C, MODESTO, CALIFORNIA 95358



## MINUTES

OCTOBER 27, 2016 AT 4:00 P.M.

3800 CORNUCOPIA WAY, 2<sup>ND</sup> FLOOR, CONFERENCE ROOM

(Agendas can be found online at <http://www.stancounty.com/parks/fish-wildlife-committee.shtm>)

### COUNTY FISH & WILDLIFE MEMBERS PRESENT:

Ed Ayers, D2  
Jim Atherstone, D3  
Bob Bashaw, D5  
Jason Guignard, D1  
Ken Meidl, D4  
(\*present by telephone conference)

### STATE FISH & WILDLIFE REPRESENTATIVE:

Phil Mckay

### PARKS & RECREATION STAFF PRESENT:

Mae Song  
Lisa Velarde

### EXCUSED/ABSENT:

Red Bartley, D1  
Anthony Maxwell, D2  
Ed Channing, ALT  
Dave Doubleddee, ALT  
Cody Johnsen, ALT  
Don Vanwey, ALT

### GUESTS PRESENT:

### A. CALL TO ORDER & INTRODUCTIONS

Ed Ayers called the meeting to order. Mae Song introduced Lisa Velarde who will be replacing her for quarterly meetings at the end of the year in July and October. Cathy Winchester will continue assisting meetings in January and April.

Ayers

### B. REQUESTS FOR FUNDS/PROJECT UPDATES

No request for funds was received.

### ACTIONS & REPORTER

### C. CORRESPONDENCE

The Committee acknowledged the correspondence received and suggested further action or comment be directed to the corresponding agency as listed on the agenda and correspondence.

A comment was made that items for review are sometimes received after a deadline and it is too late to take action. Mae stated board items referred are sent as soon as they are updated on the Board of Supervisors' website. Committee members can go onto the county website to subscribe for direct notification from the board. All items referred by the board will continue to be placed on agenda for discussion.

### ACTIONS

Ayers, Atherstone

Correspondence #4: There was a notice attached to this item stating statutes are changing for illegal trophy hunter fines to be adjusted based on the species and size for deer, antelope and turkeys.

**D. PUBLIC COMMENTS****ACTIONS & REPORTER**

No comment was received.

**E. APPROVAL OF MINUTES****ACTIONS**

Minutes for the July 28, 2016 meeting were upon motion and seconded with the following two changes:

- Ken Meidl was in attendance for the July meeting.
- A change noted in section B-1: creel consensus corrected to creel census.

Bashaw, Meidl,  
unanimous approval

**F. WILDLIFE MANAGEMENT REPORT****ACTIONS & REPORTER**

1. Phil McKay reported deer season was extremely slow; the slowest seen in his 20+ years of experience due to the weather conditions being hot, dry and dusty. No numbers were available, and tags were sold out.
2. Duck season opened last weekend and was good along the river in Merced County. In Stanislaus County numbers were not as good since hunting is allowed only in the reservoir areas. Along the river areas of Merced County hunting is good for large birds such as mallards. There was a four bird average and numbers up to the limits taken.

McKay

**G. FISHERY REPORT****ACTIONS & REPORTER**

1. This year's mid-migration fall run numbers were good for fish, with over 5,000 fish on the Stanislaus River, and over 1,000 fish on Tuolumne River. This is the highest that the numbers have ever been this early in the season. Last year's season total was 12,000 for Stanislaus River, but at this point last year numbers were just over 1,000. Last year's total for the season on Tuolumne was 400 near the riverbank. This year they are seeing 500-700 fish a day. The Hyacinth died off over the winter and Phil McKay was involved with removing the blockages around Grayson area but it is building up again. Fish numbers for Merced were not available. In the Stanislaus River last year we had too many fish, with fish spawning on top of each other and displacing eggs, there were not many juveniles. There are more fish, but there is a higher percentage of hatchery fish now that they are trucking to the bay and out to sea at almost 100 percent. There is strain since they are not honing in to their origin. Near the hatchery in Sacramento fish are being put in large nets and trucked to Rio Vista area, and released along the way to avoid striped bass.

Guignard

**H. WILDLIFE ENFORCEMENT REPORT****REPORTER**

Phil McKay reported on information he received from the supervisor in the area. Due to more water in the Stanislaus and Tuolumne Rivers, there are more fish and people trying to grab salmon with nets in those areas. As a result, more time and efforts are spent in enforcement with no additional staff.

McKay

**I. WOOD DUCK REPORT****ACTIONS & REPORTER**

Ed Ayers has the contact information for California Waterfowl Association, but has not contacted them regarding the wood duck equipment and program efforts. Ed will talk with Caroline Brady, who is the Waterfowl Program Coordinator, to see if she can recommend anyone who may be interested in the wood duck boxes and poles which are not being used. He has contacted several people with no responses received. There have been problem with groups maintaining the efforts in the past. Having a main coordinator for the program or regional manager in the area may be beneficial to program success. Discussion ensued regarding several unsafe and possibly drug infested areas. Ed reports hearing shots fired from firearms in a particular area while out with three students. Lack of commitment and safety concerns make the program efforts a greater challenge. Wood duck boxes require maintenance about once per

Ayers



week during the season. Bob Banshaw will be taking some boxes to maintain on his property.

#### **J. CHANGES TO COMMITTEE FUND PRODECURES**

#### **ACTIONS & REPORTER**

Bob Banshaw revisited briefly the need for sole source language to be added to the fund procedures when there is only one vendor available for a particular purchase. The City of Modesto has a sole source document and he was going to provide as a guide. Lisa Velarde stated the county also has a sole source document and will email to the members for review and discussion at the next meeting.

*Banshaw*

#### **K. APPROVAL OF 2017 MEETING CALENDAR**

#### **ACTIONS & REPORTER**

The 2017 Fish & Wildlife calendar was reviewed and approved.

*Atherstone, Meidl  
unanimous approval*

#### **L. APPOINTMENT OF REGULAR MEMBER & MEMBERSHIP**

#### **ACTIONS & REPORTER**

1. The Chair recommended and appointed Vernon Gladney as a regular committee member and the committee was in consensus with his recommendation. Mr. Gladney noted on his application that he is interested in the improvement of hunting and wildlife habitat.
2. Ed shared that Red Bartley and Ed Channing may not be able to continue in attendance due to medical illness. Red Bartley will try to get someone to take his place on the committee. The need for new members was communicated to the committee. A member representing each of the five district areas of the county would be desirable, but not required. All members should have an alternate member with a total of 9 members and 9 alternates. Members need to inform the alternate to attend in their place. Membership attendance bylaws were discussed and there are some members who will be contacted regarding this issue and be removed as members. Members who will not be in attendance should contact Cathy or Lisa prior to the meeting.

*Ayers*

#### **M. OLD BUSINESS & COMMITTEE COMMENTS**

#### **ACTIONS & REPORTER**

There was no old business and no committee comments.

#### **ADJOURNMENT & NEXT MEETING**

#### **ACTIONS & REPORTER**

There being no further business, the meeting was adjourned. The next regular meeting of the Fish and Wildlife Committee will be held on:

*Atherstone, Banshaw  
unanimous approval*

**Thursday, January 26, 2016 at 4:00 p.m.  
Conference Room, 2<sup>nd</sup> Floor  
3800 Cornucopia Way, Modesto**

*Prepared By: Lisa Velarde, Fish & Wildlife Secretary*

*209-525-6721*

Agendas can also be found online at <http://www.stancounty.com/parks/fish-wildlife-committee.shtm> subject to staff's ability to post prior to the meeting. Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection during normal business hours at the main office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, CA 95358.

## **CRITERIA FOR SOLE SOURCE/SOLE BRAND**

### **A. FACTORS WHICH MAY BE APPLICABLE**

Respond specifically to each question below in preparing a justification.

1. If the product requested is one-of-a-kind item, provide background information on how this was determined.
2. Provide information on why a particular product and/or vendor was chosen.
3. Provide information on other vendors that were contacted and why they can not provide the requested product. Is the selected vendor also the manufacturer?
4. If unique features are required to successfully perform the required function, identify what those features are and why they are required. BE SPECIFIC.
5. Provide information on other models available and why they were rejected. Provide brand name, model, vendor name, date and name of each person contacted.

### **B. FACTORS WHICH DO NOT APPLY**

The following factors should not be included in your sole source/sole brand justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for a product of vendor.
2. Cost, vendor performance, local service, maintenance, and delivery (these are award factors in competitive bidding).
3. Features which exceed the minimum department requirements, e.g. heavy duty.
4. Explanation for the actual need and basic use for the equipment, unless the information relates to a request for "unique features."
5. The statement "no substitutions" will not be considered without completion of the "Justification for Sole Source/Sole Brand" form.

If you need assistance in completing this justification for sole source/sole brand form, please contact the Purchasing office at 525-6319.

**COUNTY OF STANISLAUS**  
**JUSTIFICATION FOR SOLE SOURCE/SOLE BRAND**

Requisition Number: \_\_\_\_\_

Dated: \_\_\_\_\_

Item: \_\_\_\_\_

- ☐ **Sole Source:** Item is available from only one vendor. Item is one-of-a-kind item and is not sold through distributors. Manufacturer is a sole distributor.
- ☐ **Sole Brand:** Various Vendors can supply the specified model & brand, and competitive bids will be solicited for the brand requested only.

Refer to the instructions on the back of this form for required criteria before completion.

**JUSTIFICATION:** (Attach additional sheets, if necessary)

**CERTIFICATION:**

I am aware of the requirements set forth in the County's Purchasing Policy & Procedures Manual for competitive bidding and the established criteria for justification for sole source/sole brand purchasing. As an approved department representative, I have gathered technical information and have made a concerted effort to review comparable/equal equipment. This is documented in this justification. I hereby certify as to the validity of the information and feel confident that this justification for sole source/sole brand meets the County's criteria and is accurate.

This form was completed by:

\_\_\_\_\_  
NAME

DEPARTMENTAL

APPROVAL: \_\_\_\_\_

DIRECTOR (or Authorized Rep.)/Date

\_\_\_\_\_  
DEPT/DIVISION REPRESENTATIVE/PHONE

PROCUREMENT

APPROVAL: \_\_\_\_\_

PURCHASING AGENT APPROVAL

# Fund Request Application

Stanislaus County Fish and Wildlife



STANISLAUS COUNTY  
FISH AND WILDLIFE COMMITTEE

3800 CORNUCOPIA WAY, SUITE C, MODESTO, CALIFORNIA 95358

Applicant Name Kid's Fishing Fun Day  
Agency U.S. Army Corps of Engineers  
Mailing Address 17968 Covered Bridge Rd  
City, State, Zip Oakdale, CA. 95361  
Phone 575-1111 E-mail 1

Requesting Fund Amount \$ 2,675.00 Funds needed by 04-30-2017  
Project Performance Period Nov 2016-May-2017  
Event Name (if applicable) Kid's Fishing Fun Day (KFFD)  
Purpose Teach underprivileged kids how to fish, using proper catch & release techniques, while teaching the importance of natural resource conservation and outdoor recreation ethics and water safety

Fish and Wildlife Code(s) Met (CFG Code Section 13100-13104) 13103 (a) & 10103(m)  
Public Benefit The main emphasis of the Kids Fishing Day event is to reach kid's that have never had the opportunity to enjoy the pleasures of outdoor recreation and educate them on the importance of natural resources preservation, proper catch & release fishing techniques and outdoor ethics.

Detail Items to be Purchased (include cost per item, and/or attach quote(s). Additional sheets may be attached.)  
145 -150 1-lb black bass for catch and release, after the event the fish are released into the Horseshoe Road Recreation Area Pond for the public to enjoy, restocking the pond. \$375.00 for the purchase of re

Vendor to be purchased from Golden State Bait

Will you accept partial funding? ☒ YES ☐ NO

This application may be fax to (209) 525-6773 or mailed to:

Stanislaus County Fish & Wildlife Committee  
c/o Stanislaus County Parks and Recreation  
Attn: Parks Administration  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358

*I have read and understand the Fund Request Procedures and agree to utilize the funds I am approved for to purchase items listed in this packet for said purposes and in accordance to California Fish and Wildlife Codes and Regulations. I understand I will follow-up with the Committee on the outcome of this fund request by attendance at a Fish and Wildlife Committee meeting within one year.*

WINCHESTER.NORM.ALAN.126171

Digitally signed by WINCHESTER.NORM.ALAN.126171 DN: cn=WINCHESTER.NORM.ALAN.126171, o=Stanislaus County Fish and Wildlife Committee, ou=Stanislaus County Fish and Wildlife Committee, email=WINCHESTER.NORM.ALAN.126171@stanislauscountycalifornia.gov, c=US

Signature: 0257

Date: 01-Dec-2017

OFFICE USE ONLY:

APPROVED FOR \$ \_\_\_\_\_ DATE: \_\_\_\_\_



STANISLAUS LODGE #170, I.O.O.F.

P.O. Box 834  
Knights Ferry, Ca. 95361



Independent Order of Odd Fellows  
Stanislaus Lodge # 1.0.0.F  
Knights Ferry, CA 95361

30 September 2016

Army Corps of Engineers  
Stanislaus River Parks  
17968 Covered Bridge Rd  
Oakdale, CA 95361

Stanislaus County Fish & Wildlife Committee  
3800 Cornucopia Way  
Suite C  
Modesto, CA. 95358

Subject: Donation for Kids Fishing Fun Day.

Dear Committee Chairman,

The Army Corps of Engineers and The Independent Order of Odd fellows Stanislaus Lodge # 170 as co-sponsors would like to thank the Stanislaus County Fish & Wildlife Committee for allowing us to submit a proposal to the committee in regards to a donation for our **Kids Fishing Fun Day on Saturday May 6th 2017.**

The main emphasis of the Kids Fishing Fun Day event is to reach kid's that have never had the opportunity to enjoy the pleasures of outdoor recreation and educate them on the importance of natural resources preservation, proper catch & release fishing techniques and outdoor ethics. The kids will be coming from the Stanislaus County **Police Youth Activities League, POC Alfredo Guerra.**

Some of the activities will include: a fly casting demonstration; an interactive animal tracks program, fish imprinting art deco (Gyotaku) and a water safety program put on by Army Corps Rangers and of course lots of fun fishing!

I am inquiring if the Fines Committee would be willing to donate \$2,300.00 for the purchase of 270, 8"- 10" Large Mouth Bass to be purchased from Golden State Bait Inc in Merced formally known as Dutchman Creek and \$375 for replacement rod/reels. Stanislaus River Parks has no checking account for the deposit of donations. If our request is funded, **please direct the funds for payment to the vendor.**

If you have any questions, please contact Ranger Norm Winchester @ (209) 881-3517 ex.24. I look forward to hearing from you. Thank you for your time.

Sincerely,

Park Ranger  
Norm Winchester  
Stanislaus River Parks

STANISLAUS LODGE #170, I.O.O.F.

P.O. Box 834  
Knights Ferry, Ca. 95361



**STANISLAUS COUNTY FISH AND GAME COMMITTEE**

**APPLICATION FOR FISH AND GAME FINE MONIES**

**FUNDING FOR FISCAL YEAR**

**2016/2017**

**1. NAME & ADDRESS OF APPLICANT.**

Independent Order of Odd Fellows  
Stanislaus Lodge # 1.0.0.F  
Knights Ferry, CA 95361

U.S Army Corps of Engineers  
Stanislaus River Parks  
17968 Covered Bridge Rd.  
Oakdale, CA 95361

**2. TITLE OF PROJECT.**  
Kids Fishing Fun Day.

**3. AMOUNT OF FUNDING REQUESTED. \$2,300.00.**  
\$ 2,000.00 for the purchase of fish planting 270 (8"- 10" Large Mouth Bass) +  
\$300 for transportation cost and \$375.00 for replacement rod/reels.

**4. NAME, TITLE ADDRESS & PHONE # OF PROJECT COORDINATOR.**  
Park Ranger/Natural Resource Specialist Norm Winchester & Student Park Ranger  
Jered Bodenhausen.

17968 Covered Bridge Rd.  
Oakdale, CA 95361  
(209) 881-3517 ex. 24  
(209) 881-3203 fax

**5. OBJECTIVE OF PROJECT.**  
Teach underprivileged kids how to fish, using proper catch & release techniques,  
while teaching the importance of natural resource conservation and outdoor  
recreation ethics and water safety.

**6. COMPLETE PROJECT DESCRIPTION.**  
The main emphasis of the Kids Fishing Day event is to reach kid's that have  
never had the opportunity to enjoy the pleasures of outdoor recreation and educate

STANISLAUS LODGE #170, I.O.O.F.

P.O. Box 834  
Knights Ferry, Ca. 95361



them on the importance of natural resources preservation, proper catch & release fishing techniques and outdoor ethics.

The kids will be instructed by professional fisherman on the proper techniques used to catch fish. There will be a demonstration put on by Oakdale Rural Fire Department on fire prevention, if available due to fire season. The Bureau of Reclamation will be conducting an interactive animal tracks program. The Army Corps will be doing an art deco program called Gyotaku Fish Imprinting and water safety.

7. PROJECT DEVELOPMENT SCHEDULE.  
December 2015- May 2016.
8. WHAT OTHER FUNDING SOURCES HAVE BEEN EXPLORED FOR FUNDING OF THIS PROJECT?  
Private donations through other Fish farm companies was conducted, many companies have gone out of business.
9. IF NECESSARY, CAN THE PROJECT BE DIVIDED INTO SEGMENTS FOR FUNDING PURPOSES? NO.
10. JUSTIFICATION FOR PROJECT, INCLUDING DISCUSSION OF ALTERNATIVES FOR ACCOMPLISHING THE PROJECT OBJECTIVES.  
We will bring in 55-60 kids from the Police Youth Activities League that have never recreated on a river or lake and expose them to the fun the outdoors provides. These kids come from low income urban areas that are infested with drugs, guns and violence as part of their everyday life.
11. WHAT ARE THE LONG-RANGE PLANS OF THIS PROJECT?  
To make this an annual event for future generations.
12. HOW WILL THE REPORT BE PRESENTED (AUDIO-VISUAL AIDS, CHARTS, MAPS, DISCUSSION, AND FIELD TRIP)?  
A letter describing the results will be mailed after completion of the event.
13. DESCRIBE LAND STATUS, OWNERSHIP, LEGAL DESCRIPTION, VICINITY AND SITE MAPS. Horseshoe Recreation area, East of 14842 Orange Blossom Rd, Oakdale, Ca 95361. Horseshoe Recreation Area 20 Acre pond.
14. THE HISTORY OF CONDITION AND STATUS OF RESOURCE AND EXPECTED BENEFITS.  
Fishing has been a sport for many years for families who have access to fishing areas. We are targeting kids, who have never been to a river or fished before.
15. PUBLIC CONTACTS (ORGANIZATIONS, ELECTED OFFICIALS, AGENCIES).  
Agencies involved include: Army Corps of Engineers, Bureau of Reclamation, and Oakdale Rural Fire & California Department of Fish & Game.

STANISLAUS LODGE #170, I.O.O.F.

P.O. Box 834  
Knights Ferry, Ca. 95361



Stanislaus County  
Department of Parks & Recreation  
24 August 2016

### Fish & Wildlife Committee

**Scope of Work:** This proposal is requesting funding to stock the Horseshoe Recreation Area Pond with largemouth bass.

#### PROPOSAL Golden State Bait Inc.

| Type of Fish     | Quantity | Approximate Cost     | Total Cost  |
|------------------|----------|----------------------|-------------|
| Large Mouth Bass | 140-145  | \$ 8.50 ea ( 8"-10 ) | \$2000.00   |
| Delivery         | 1        | \$ 300.00            | \$00.00     |
|                  |          | Total                | \$ 2,300.00 |

#### Actual Purchase & Amounts

| Type of Fish     | Quantity | Approximate Cost     | Total Cost  |
|------------------|----------|----------------------|-------------|
| Large Mouth Bass | 145      | \$ 8.50 ea ( 8"-10 ) | \$2000.00   |
| Delivery         | 1        | \$ 300.00            | \$00.00     |
|                  |          | Total                | \$ 2,300.00 |

The Army Corps would like to thank the Fish & Wildlife Committee for their contribution to this event.



STANISLAUS LODGE #170, I.O.O.F.

P.O. Box 834  
Knights Ferry, Ca. 95361



COUNTY: STANISLAUS REGISTERED AQUACULTURALISTS

Facility Information

CLAY PA FISH CO. Out of Business

(209) 480-5147

0842

OAKDALE, CA 95361

10941 EATON RD

Bluegill channel catfish common carp

Largemouth bass

=====

DONALD SCHMIDT LIVE FOODS Only producing catfish

(209) 848-8625

0762

OAKDALE, CA 95361

7549 PATTERSON RD

C G N

Bullfrog channel catfish golden shiner minnow

Largemouth bass mosquito fish smallmouth bass

=====

GINOS FISH FARM/ BIG V CORPORATION Only producing catfish

(209) 668-7868

0823

CROWS LANDING, CA 95313

10815 S CARPENTER RD

=====

KENT KNOX & JOHN LANDERS FISH FARM Only producing catfish

(209) 848-1300

0944

OAKDALE, CA 95361

7591 PATTERSON RD

B C N

Bluegill bullfrog channel catfish

Common carp fathead minnow golden shiner minnow

Largemouth bass mosquito fish red swamp crayfish

=====

MAY ENTERPRISE INC Out of Business

(209) 491-0808

0780

WATERFORD, CA 95386

4831 TIMBELL RD

=====

Golden State Bait Inc. formally known as Dutchman Creek

6554 S. Healy Road

Merced, CA 95340

(209) 384-3474

(209) 385-3474

=====

**STANISLAUS LODGE #170, I.O.O.F.**

P.O. Box 834  
Knights Ferry, Ca. 95361



**\*Companies contacted for estimates listed below.**

**Foothill Fisheries  
853-2167**

| Type of Fish     | Quantity      | Approximate Cost            | Total Cost |
|------------------|---------------|-----------------------------|------------|
| Large Mouth Bass | no            | \$ a pound (<br>inch fish = | \$         |
| Blue Gill        | no            | \$ a fish                   | \$         |
| Delivery         | no            | \$                          | \$         |
|                  | Sturgeon only | Total                       | \$         |

\*Did not meet requirements

**Gino's Fish Farm /Big V Corporation  
668-7868**

| Type of Fish     | Quantity               | Approximate Cost            | Total Cost |
|------------------|------------------------|-----------------------------|------------|
| Large Mouth Bass | Adult Black<br>Bass no | \$ a pound (<br>inch fish = | \$         |
| Blue Gill        | no                     | \$ a fish                   | \$         |
| Delivery         |                        | \$                          | \$         |
|                  |                        | Total                       | \$         |

Only carrying Catfish

**Kent Knox & John Landers Fish Farm  
848-1300**

| Type of Fish     | Quantity | Approximate Cost            | Total Cost |
|------------------|----------|-----------------------------|------------|
| Large Mouth Bass | no       | \$ a pound (<br>inch fish = | \$         |
| Blue Gill        | no       | \$ a fish                   | \$         |
| Red Ear Sunfish  | no       | 3 inch fish = \$ a<br>piece | \$         |
| Delivery         |          | \$                          | \$         |
|                  |          | Total                       | \$         |

\*Did not meet requirements, ONLY CARRYING CATFISH

1  
**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
**Russell Burns, Member**  
Napa  
**Peter Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

November 10, 2016

### TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a notice of availability of a document added to the rulemaking file to amend Section 670, Title 14, CCR, Re: Falconry regulations. The following document is being added to the rulemaking file:

- Amended Initial Statement of Reasons for Regulatory Action dated November 9, 2016.

In addition to this mailing, this document is available for public inspection between the hours of 8:00 am and 5:00 pm, Monday through Friday, at 1416 Ninth Street, Room 1320, Sacramento, CA or on our website (link provided below).

**Written comments must be received in the Commission office by 12:00 pm on Friday, December 2, 2016. Interested persons may attend the December 8, 2016 hearing in the Hilton Garden Inn San Diego Mission Valley/Stadium, 3805 Murphy Canyon Road, San Diego, California, on Thursday December 8, 2016 at 8:00 a.m.; or as soon thereafter as the matter may be heard, and may present statements orally or in writing relevant to this amended ISOR, or the rulemaking in general.**

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx#670>.

**Carie Battistone, Senior Environmental Scientist, Department of Fish and Wildlife, phone (916) 445-3615, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,



Jon D. Snellstrom  
Associate Governmental Program Analyst

Attachment

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
**AMENDED** INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Section 670  
Title 14, California Code of Regulations  
Re: Falconry

I. Date of Initial Statement of Reasons: July 26, 2016

**Date of the Amended Initial Statement of Reasons: November 9, 2016**

II. Dates and Locations of Scheduled Hearings:

- |                         |           |                  |
|-------------------------|-----------|------------------|
| (a) Notice Hearing:     | Date:     | August 25, 2016  |
|                         | Location: | Folsom, CA       |
| (b) Discussion Hearing: | Date:     | October 20, 2016 |
|                         | Location: | Eureka, CA       |
| (c) Adoption Hearing:   | Date:     | December 8, 2016 |
|                         | Location: | San Diego, CA    |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The falconry regulations were last amended in 2013 to conform to federal guidelines which required states to adopt their own rules governing the sport. At that time it was understood by the Fish and Game Commission (Commission), falconers, and the public that the new California regulations would **require future amendments need updating**. The proposed amendments include numerous changes to bring the regulations more in line with the current practice of falconry in California and federal guidelines. In addition, editorial changes were needed for clarity and consistency.

**PROPOSED REGULATIONS**

The changes currently proposed for inclusion are enumerated in the following table. The first column is the current subsection to be amended. The second column indicates the new subsection (renumbered) of the amendment, and the third column contains the general subject to be changed, edited, or made more specific (refer to the regulatory text for proposed language and context).



The amended ISOR adds statements of necessity to Section III (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary; other clarifying statements; and, minor editorial changes. These statements are entirely related to, and do not alter, the proposed regulatory text in Section 670.

In response to comments from the California Hawking Club, Department of Fish and Wildlife (Department), and other falconers, the Commission revised the proposed regulatory text in two areas. Subsection 670(a) was revised to reduce the number of documents required to be carried by falconers when hunting. Falconers will be required only to have in their immediate possession a valid original falconry license, a valid original hunting license, and any required stamps, the same as required for any other hunter. Subsection 670(a)(4), which initially specified additional documents related to falconry, has been deleted.

Subsection 670(j)(3)(A) has also been revised to clarify that falconry facilities may be inspected only when the licensee is present. Falconers had expressed concern that Department staff entering their facilities without the owner present would place unnecessary stress on the birds. The Commission also added language to make it clear that attempts to avoid inspection by repeatedly being unavailable may result in license suspension. Licenses suspended under these circumstances may be reinstated upon completion of an inspection finding no violations of these regulations or any license conditions.

The additions to the ISOR are indicated in bold, double underlined text in this Amended Initial Statement of Reasons; deletions are indicated by strikeout text. (Some minor edits, adds or deletes, for improved clarity, spelling, punctuation, etc., that do not affect content, are not shown.)

Errors in the ISOR have also been corrected: in subsection 670(e)(2)(C), the word "expired" should not have been added and is therefore deleted; and in subsection 670(e)(6)(C)1, the words "and eagles" should not have been added and are therefore deleted.

| Current Subsection | New subsection | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 670                | 670            | <p>The following minor editorial changes are proposed for clarity and consistency in Title 14 throughout Section 670 where appropriate:</p> <ul style="list-style-type: none"> <li>• Change all subsection titles from ALL CAPITALS to Upper/lower case.</li> <li>• Delete internal subsection references found within the same subsection; replace with "as described (or specified) herein" where appropriate.</li> <li>• Change all Department website references to the current web address: wildlife.ca.gov.</li> <li>• Number or renumber subsections to separate different provisions for clarity.</li> <li>• Change all references to "regulatory year" to "license year".</li> <li>• Change all references to "lapsed" licenses to "expired".</li> <li>• Change all references to "level" to "class".</li> <li>• Change all references to "consecutive" days to "calendar days" (e.g., 30 calendar days). This change does not conflict with federal falconry regulations, which read "consecutive calendar days".</li> <li>• Replace most references to "he/she" with "licensee", and "his/her" with "the licensee's" (or similar as needed).</li> <li>• Change all references to federal regulations found in Title 50, CFR, Part 21, to "50 CFR 21" for consistency.</li> <li>• The USFWS amended their falconry regulations to allow California falconers to report directly to the Department. Accordingly, remove all references to the federal form 3-186A and electronic reporting, and replace with the Department's reporting system.</li> </ul> |
| (a)                | (a)(1)-(6)     | <ul style="list-style-type: none"> <li>• <u>The current text of "General Provisions" is contained in a single paragraph and has been divided into 6 subsections for greater clarity.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                    | (a)(2)         | <ul style="list-style-type: none"> <li>• Add clause to recognize exceptions required under Fish and Game Code Section 12300, Application of code to California Indians; Limitations and condition.</li> <li>• Add the words "it shall be unlawful" to clarify that possession of a valid <u>falconry and hunting licenses and any required stamps is</u> <u>are</u> required while engaged in falconry activities, and <u>lack of a license violation of this requirement</u> is a citable offense.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                    | (a)(4)         | <ul style="list-style-type: none"> <li>• <u>Delete from this regulation the requirement to carry other documents that are only required in specific circumstances as described in the Fish and Game Code or other regulations. At the Commission's request, add language that specifies the types of documentation falconers are</u> <ul style="list-style-type: none"> <li>○ <del>an original valid hunting license when hunting with a raptor;</del></li> <li>○ <del>permission to hunt on private property;</del></li> <li>○ <del>permission to fly or hunt with another falconer's bird(s);</del></li> <li>○ <del>permission to fly a raptor for rehabilitation purposes; or</del></li> <li>○ <del>Department-approved exemption from banding when transporting or flying an un-banded raptor.</del></li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

| Current Subsection | New subsection      | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|                    | (a)(5)              | <ul style="list-style-type: none"> <li>Change the date of the Code of Federal Regulations to the most recent 07/02/2015.</li> <li>Delete "The department shall make these and the federal regulations available at <a href="http://www.dfg.ca.gov/licensing/">www.dfg.ca.gov/licensing/</a>". <b><u>This provision is duplicative since the Department is required by law to maintain adopted regulations and make them easily available to the public.</u></b></li> </ul>                                                                                                                                                                                                                       |
|                    | (a)(6)              | <ul style="list-style-type: none"> <li>Add a statement <b><u>clarifying that the public may</u></b> obtain and submit forms at the License and Revenue Branch, or on the Department's online reporting system.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (b)                | (b)(7)              | <ul style="list-style-type: none"> <li>Amend the definition of "Falconry" by deleting the reference to "free flight." The word "training" includes free flight and other activities when not in flight, <b><u>so including the term "free flight" is redundant.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                               |
|                    | (b)(8)              | <ul style="list-style-type: none"> <li>Amend the definition of "Hacking" which is a method of having the raptor "gain experience and conditioning"</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                    | (b)(10)             | <ul style="list-style-type: none"> <li>Amend the definition of "Imp" to "Imping" using "another" feather to repair a damaged feather on a bird.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                    | (b)(12)             | <ul style="list-style-type: none"> <li>Add definition of "license year" for consistency with other regulations. This replaces the definition of "Regulatory year" in (b)(15).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (b)(15)            |                     | <ul style="list-style-type: none"> <li>Delete definition of "Regulatory year" and replace with License year (b)(12) for consistency with other regulations.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| (c)                | (c)                 | <ul style="list-style-type: none"> <li>When referring to California hunting laws and regulations, change "related to" to "authorizing" for clarity.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| (c)                | (c)(1)<br>(A) – (B) | <ul style="list-style-type: none"> <li>Add clarity and improve instructions regarding procedures to follow in the event of inadvertent <b><u>(for example, out of season)</u></b> take of wildlife (other than threatened or endangered species);</li> <li><b><u>Add language requiring animals injured as a result of unauthorized take to be taken to a rehabilitation facility for consistency with federal regulations, 50 CFR 21.29(e)(6).</u></b></li> <li>Add "let it lay" language, meaning that if inadvertent take of wildlife (other than threatened or endangered species) occurs to let the raptor feed on it, <b><u>but the falconer shall not take possession.</u></b></li> </ul> |
|                    | (c)(2)              | <ul style="list-style-type: none"> <li>Add the reporting of band or tag numbers (if any) of wildlife taken unintentionally. Important wildlife information is gained through band returns.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

| Current Subsection | New subsection | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| (d)                | (d)            | <ul style="list-style-type: none"> <li>• Delete provisions requiring licensee to ensure that falconry activities do not result in the take or possession of a threatened or endangered wildlife species taken incidentally by a falconry raptor. <del>Threatened and endangered species may not be taken or possessed at any time.</del></li> <li>• Clarify that the take of threatened and endangered species, candidate species or fully protected species is not authorized by a falconry license.</li> <li>• <b><u>Change the reporting of take of listed species to the License and Revenue Branch rather than to the Department's regional offices to provide a single point of contact.</u></b></li> </ul> |
| (e)                | (e)(1)(A)      | <ul style="list-style-type: none"> <li>• Add 'nonresident, or non-US citizen' <b><u>to clarify who may apply for a new license.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                    | (e)(1)(B)      | <ul style="list-style-type: none"> <li>• Delete "resident or nonresident" and replace with "licensee" for clarity <b><u>as to who may renew. Add "...that has not been expired for more than 5 years," clarifying that a formerly licensed person who has left falconry, may become licensed again within 5 years without taking the examination, for consistency with Department practice.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                    |
|                    | (e)(1)(C)      | <ul style="list-style-type: none"> <li>• Delete "resident" and replace with "licensee" clarifying that any licensee, and not only residents, may renew a license year-to-year prior to its expiration.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                    | (e)(1)(D)      | <ul style="list-style-type: none"> <li>• Delete "...and intends to establish permanent residency in California prior to becoming a resident," since residency is not a requirement for licensing in California (for example a non-US citizen unlicensed falconer may apply in order to practice falconry); there is no need for this provision.</li> </ul>                                                                                                                                                                                                                                                                                                                                                        |
| (e)(2)             | (e)(2)(A)-(E)  | <ul style="list-style-type: none"> <li>• <b><u>Re-numbered to separate the different provisions for clarity.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                    | (e)(2)(A)      | <ul style="list-style-type: none"> <li>• <b><u>Delete "lapsed license" since a license expired more than 5 years cannot be renewed and therefore a new license will be required.</u></b></li> <li>• <b><u>Add reference to the "nonrefundable application fee" to clarify that the fee is due with the application.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                            |
|                    | (e)(2)(B)      | <ul style="list-style-type: none"> <li>• Add language to clarify that a license is renewable when not expired more than 5 years.</li> <li>• Add reference to the "nonrefundable <b><u>application fee</u></b>" <b><u>to clarify that the fee is due with the application.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                    | (e)(2)(D)      | <ul style="list-style-type: none"> <li>• <b><u>Delete the listing of possible violations for disqualification and add a more concise phrase to</u></b> clarify that the certification relates to any "pending or previous administrative proceedings" that could disqualify the applicant.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                             |
|                    | (e)(2)(E)      | <ul style="list-style-type: none"> <li>• Clarify that the Department is "reviewing" the documents submitted by the applicant rather than "evaluating".</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |



| Current Subsection | New subsection         | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| (e)(2)(C)          |                        | <ul style="list-style-type: none"> <li>• <b><u>Delete because residency is not a requirement for obtaining a falconry license.</u></b></li> <li>• Move the applicable nonresident provisions to subsection (e)(5) Nonresidents of California and Non-US Citizens, keeping these related regulations together for clarity.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                 |
| (e)(3)             | (e)(3)                 | <ul style="list-style-type: none"> <li>• <b><u>Re-number subsection to more clearly identify the different parts of the provision.</u></b></li> <li>• Add, "Any applicant not possessing a valid falconry license, or required to apply for a new..." for clarity on who needs to take the examination.</li> <li>• Clarify that the fee is charged for each examination in order to recover the Department's reasonable costs.</li> </ul>                                                                                                                                                                                                                                                                                            |
|                    | (e)(3)(A)<br>2. and 3. | <ul style="list-style-type: none"> <li>• <b><u>Add a new subsection specifying when an applicant is not required to take the examination.</u></b></li> <li>• Add language to clarify that nonresident and non-US citizens who have a valid license are exempt from the examination.</li> <li>• Add language for an exception when the applicant is a member of a federally recognized tribe and has a valid falconry license issued from that member's tribe, in accordance with FGC Section 12300.</li> </ul>                                                                                                                                                                                                                       |
|                    | (e)(3)(B)              | <ul style="list-style-type: none"> <li>• Add language to clarify the necessity of an inspection of raptor facilities prior to a license being issued to a new falconer applicant.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (e)(4)             |                        | <ul style="list-style-type: none"> <li>• <b><u>Delete and re-write to clarify the provisions concerning the expiration and renewal of a falconry license.</u></b></li> <li>• Clarify that a falconry license is not valid unless renewed annually with the required application form and payment of fees.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                    | (e)(4)(A)-(C)          | <ul style="list-style-type: none"> <li>• Clarify that the practice of falconry is not allowed <b><u>without a valid license in possession.</u></b> <del>under an expired license, and what steps need to be taken if the licensee wishes to continue to practice falconry. Clarify that an expired license is not valid unless renewed.</del></li> <li>• <del>Provide for renewal of licenses not expired more than 5 years.</del></li> <li>• Clarify that a license expired more than 5 years may not be renewed but that an application for a new license is required.</li> <li>• <b><u>5 years provides a clear timeframe during which renewal can occur and is consistent with existing Department practices.</u></b></li> </ul> |
|                    | (e)(5)(A)              | <ul style="list-style-type: none"> <li>• Add, "The applicant is a member of a federally recognized tribe and has a valid falconry license issued from that member's tribe" in accordance with FGC Section 12300.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| (e)(5)(A)          | (e)(5)(B)<br>1.-3.     | <ul style="list-style-type: none"> <li>• Delete <b><u>"fly raptors held for falconry"</u></b> and add <b><u>"practice falconry with raptors"</u></b> to clarify that practicing falconry covers more than just flying a raptor.</li> <li>• Clarify that the <b><u>original</u></b> authorization to fly another California licensee's raptor must be signed and dated and in possession.</li> <li>• Clarify that the facilities of nonresident or non-U.S. citizen falconers may be temporary but must still meet the housing standards in California regulations, or nonresident or non-U.S. citizen falconers may house raptors held under their license with another California licensee.</li> </ul>                              |

| Current Subsection | New subsection | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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|                    | (e)(5)(C)      | <ul style="list-style-type: none"> <li>• Add provisions to clarify that a non-resident, or non-US citizen, or tribally licensed falconer, seeking a California license, must submit proof of a valid license and have the <u>licensee's raptor facilities inspected prior to obtaining a California license to ensure raptors will be adequately housed.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                    | (e)(5)(D)      | <ul style="list-style-type: none"> <li>• Add provisions to clarify that a non-resident or non-US citizen, or tribal member falconer without a valid license must apply as a new applicant, pass the examination, and have their raptor facilities inspected to obtain a California license.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| (e)(6)             | (e)(6)         | <ul style="list-style-type: none"> <li>• Clarify that the Department has 'sole discretion' to establish the class for a falconer.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|                    | (e)(6)(A)3.    | <ul style="list-style-type: none"> <li>• Clarify the necessity of maintaining a continuous sponsorship of an apprentice, and what period of time will be counted toward a total of 2 years sponsorship <u>should an apprentice lose his sponsor.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                    | (e)(6)(A)4.    | <ul style="list-style-type: none"> <li>• Add, "The Apprentice may take raptors less than 1 year old, except nestlings." This language is the same as provided in 50 CFR 21.29(c)(2)(i)(E) limiting what can be permitted in California <u>and thus provides consistency with Federal regulations.</u></li> <li>• Add <u>clarification</u> that an apprentice must maintain proof of legal acquisition.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                       |
|                    | (e)(6)(A)6.    | <ul style="list-style-type: none"> <li>• Clarify that it is the responsibility of the sponsor to certify that the minimum requirements have been met by the apprentice.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                    | (e)(6)(B)2.    | <ul style="list-style-type: none"> <li>• Delete the portion of the provision regarding "threatened and endangered species" <u>because this is repetitive of the provisions set forth in subsection 670(d) which clearly provide that a falconry license does not authorize the take of species listed as threatened or endangered, or wildlife designated as fully protected within the state of California.</u></li> <li>• <u>Delete "and eagles" because</u> the provisions set forth in subsection (e)(6)(C)2. clearly provide that only a Master Falconer may possess eagles.</li> <li>• Specify that the General class falconer must maintain proper documentation of legal acquisition of birds, whether from California or elsewhere <u>another state or country.</u></li> </ul> |
|                    | (e)(6)(C)1.    | <ul style="list-style-type: none"> <li>• Delete the portion of the provision regarding "threatened and endangered species" <u>because this is repetitive of the provisions set forth in subsection 670(d) which clearly provide that a falconry license does not authorize the take of species listed as threatened or endangered, or wildlife designated as fully protected within the state of California.</u>, and is repetitive of the provisions set forth in subsection (e)(6)(C)2. which clearly provide that a Master Falconer may possess eagles.</li> <li>• Specify that the Master class falconer must maintain proper documentation of legal acquisition of birds, whether from California or elsewhere <u>another state or country.</u></li> </ul>                         |

| Current Subsection | New subsection        | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|                    | (e)(6)(C)2.<br>i - iv | <ul style="list-style-type: none"> <li>• Add language specifying that proof of legal acquisition of eagles is required.</li> <li>• Clarify that eagles shall not be <u>captured</u> from the wild and may only be obtained from a permitted source. Eagles in the wild are fully protected in California and therefore can only be obtained from a permitted source.</li> <li>• Add language to allow temporary transfer of eagles from a rehabilitation facility to a <u>Master Falconer</u> to assist in rehabilitation.</li> <li>• Add clarification for <u>original documentation verifying the Master Falconer's prior experience with eagles in order to obtain Department authorization to possess eagles.</u></li> </ul>              |
| (e)(7)             | (e)(7)(B)             | <ul style="list-style-type: none"> <li>• Clarify that the examination fee must be paid each time the applicant takes the examination.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                    | (e)(7)(C)2.           | <ul style="list-style-type: none"> <li>• Add language to clarify that a new inspection is not required if the facilities shared by multiple falconers have passed a previous inspection.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                    | (e)(7)(E)             | <ul style="list-style-type: none"> <li>• Clarify that the administrative processing fee is charged only when the falconer requests that the Department enter the Resident Falconer Raptor Capture, Recapture and Release Report form into the Department's online reporting system.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (e)(7)(F)-(G)      |                       | <ul style="list-style-type: none"> <li>• Delete subsections concerning the Raptor Capture Drawing, and consolidate in a new subsection (g)(8) <u>together with the drawing requirements</u> for clarity.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                    | (e)(8)(D)             | <ul style="list-style-type: none"> <li>• Clarify that notification <u>of denial by</u> the Department is required to be in writing.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                    | (e)(9)                | <ul style="list-style-type: none"> <li>• Add "the Fish and Game Code" to allow for suspension or revocation based on violations of Fish and Game Code sections pertaining to raptors.</li> <li>• At the request of the Commission, <u>add standards to guide the Department in determining what types of violations would result in immediate revocation. These standards include: a finding by the Department that the violation(s) pertains to conduct that threatens native wildlife, agricultural interests of this state, the welfare of the birds, or the safety of the public, or that the licensee has had a prior conviction or suspension.</u></li> <li>• Change "pursuant to" to "as described herein" for consistency.</li> </ul> |
|                    | (e)(10)               | <ul style="list-style-type: none"> <li>• <u>Change "pursuant to" to "as described herein" for consistency.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                    | (e)(11)               | <ul style="list-style-type: none"> <li>• Add "30 calendar days" to clarify the last day for an appeal request.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                    | (e)(12)               | <ul style="list-style-type: none"> <li>• Delete "after the expiration of the license." The purpose of record retention was to have a 5-year retention maximum, not until after the license has expired <u>which could be interpreted to mean many more years.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

| Current Subsection | New subsection  | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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|                    | (e)(13)         | <ul style="list-style-type: none"> <li>• Change five "calendar" days to "business" days consistent with state offices being open.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                            |
| (f)(1)-(3)         |                 | <ul style="list-style-type: none"> <li>• <b><u>Subsection is deleted, re-numbered and re-written for clarity.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|                    | (f)(1)-(3)      | <ul style="list-style-type: none"> <li>• Change the reference from federal reporting forms to the Department's online reporting system. The requirements for each submittal are the same and the Administrative Processing Fee will be charged in the same way.</li> <li>• Add language to require that the inadvertent take of non-target wildlife be reported on the Hunting Take Report. <del>Clarify that the inadvertent take of non-target wildlife is required to be reported as set forth in subsections (c) and (d).</del></li> </ul>                          |
| (g)                | (g)(1)          | <ul style="list-style-type: none"> <li>• Revise to lower case "resident".</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                    | (g)(2)          | <ul style="list-style-type: none"> <li>• Revise to lower case "nonresident".</li> <li>• Delete text related to the requirements for a license since this has already been described.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                         |
|                    | (g)(3)          | <ul style="list-style-type: none"> <li>• Add a provision which specifies that non-U.S. citizens are not eligible to capture any California wild <b><u>raptor for consistency with federal regulations.</u></b></li> <li>• <b><u>Re-number the subsequent subsections</u></b></li> </ul>                                                                                                                                                                                                                                                                                 |
| (g)(7)(A)          | (g)(8)(A)       | <ul style="list-style-type: none"> <li>• Clarify that there is no limit on capturing Northern Goshawk outside of the Tahoe Basin.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                            |
| (g)(7)(K)          | (g)(9)<br>1 - 2 | <ul style="list-style-type: none"> <li>• Renumber subsection (g)(7)(K)1.-10. to (g)(9)(A)-(J) to separate the Special Raptor Capture Random Drawing requirements to its own subsection.</li> <li>• Clarify that the random drawing is to distribute permits for those species with quotas as provided in (g)(8).</li> <li>• Revise to lower case "resident" and "nonresident".</li> </ul>                                                                                                                                                                               |
|                    | (g)(9)(C)       | <ul style="list-style-type: none"> <li>• Clarify where licensee is to apply for drawing: <b><u>ALDS, or other locations.</u></b> and that a fee is required for each application.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                            |
|                    | (g)(9)(D)       | <ul style="list-style-type: none"> <li>• Change the "midnight" deadline to "11:59 pm" for clarity</li> <li>• Change the application deadline to May 15, closer to the actual drawing date as a convenience to the participants.</li> <li>• <b><u>Delete ALDS since it duplicates the previous subsection.</u></b></li> <li>• Delete "Incomplete, late ... shall not be included in the drawing" because the drawing will be held based on the electronic filing of the applications, which cannot be completed until the information is correctly submitted.</li> </ul> |
|                    | (g)(9)(E)       | <ul style="list-style-type: none"> <li>• Add a description of the random drawing and award method by computer <b><u>for clarity.</u></b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                     |

| Current Subsection | New subsection | Reason for the Proposed Amendment<br>Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                    | (g)(9)(F)      | <ul style="list-style-type: none"> <li>• Change notification process to exclude mailed notification because both the entry and notice are only available online.</li> <li>• Delete notification to unsuccessful applicants because the entry and notification are only available online.</li> <li>• Change deadline for permit payment to June 30, the last day of the license year.</li> <li>• Delete date associated with permits <u>awarded</u> to alternates, if any are available, they will be awarded in the order <u>drawn</u> in the random drawing.</li> </ul> |
|                    | (g)(9)(H)      | <ul style="list-style-type: none"> <li>• <u>Clarify that the capture can be reported online.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                    | (g)(9)(I)      | <ul style="list-style-type: none"> <li>• Clarify that when the permit holder is unsuccessful, the permit is to be returned to the License and Revenue Branch with 10 days of the expiration of the permit.</li> </ul>                                                                                                                                                                                                                                                                                                                                                    |
| (g)(8)             | (g)(10)(A)     | <ul style="list-style-type: none"> <li>• Clarify that any owner (not only a researcher) of a transmitter should be contacted.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (g)(9)             | (g)(11)        | <ul style="list-style-type: none"> <li>• <u>Clarify that the injury shall be reported online.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (g)(11)            | (g)(13)        | <ul style="list-style-type: none"> <li>• Clarify that the written permission of the private property owner is to be the original with signature.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                              |
| (h)(2)(A)          | (h)(2)(A)      | <ul style="list-style-type: none"> <li>• Clarify that a licensed falconer may temporarily possess and fly a raptor if they possess the appropriate class to do so.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                            |
| (h)(3)             |                | <ul style="list-style-type: none"> <li>• Delete subsection (h)(3). The permanent disposition of wildlife, including birds, from a rehabilitation facility is set forth in Section 679, Possession of Wildlife and Wildlife Rehabilitation.</li> </ul>                                                                                                                                                                                                                                                                                                                    |
| (h)(4)             | (h)(3)         | <ul style="list-style-type: none"> <li>• Clarify that falconers are permitted to have temporary possession, while caring for an injured raptor.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                               |
|                    | (h)(3)(A)      | <ul style="list-style-type: none"> <li>• Clarify that the terms of the transfer are at the discretion of the rehabilitator to ensure the necessary care of the raptor</li> <li>• Clarify that licensee must have legible documentation while assisting a rehabilitator (not only while flying the raptor).</li> </ul>                                                                                                                                                                                                                                                    |
|                    | (h)(3)(B)      | <ul style="list-style-type: none"> <li>• Delete provision that a rehabilitator can permanently transfer a raptor to a licensee <u>as this is not permitted under subsection 671(f)(4) of these regulations.</u></li> <li>• Add that the Department can make a determination for extended care of the raptor by a licensee.</li> </ul>                                                                                                                                                                                                                                    |
| (h)(5)             | (h)(4)         | <ul style="list-style-type: none"> <li>• Clarify that the importation of raptors by nonresidents or non-U.S. citizens may require additional federal permits.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                 |
| (h)(6)             | (h)(5)(B)      | <ul style="list-style-type: none"> <li>• Add "metal" to designate band type.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                    | (h)(5)(C)      | <ul style="list-style-type: none"> <li>• Delete authorization to allow any release of non-native raptors.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

| <b>Current Subsection</b> | <b>New subsection</b> | <b>Reason for the Proposed Amendment<br/>Revision, Addition, or Deletion</b>                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | (h)(5)(D)             | <ul style="list-style-type: none"> <li>• Add language prohibiting the release of barred owl in California (reason is due to conflicts with native spotted owls).</li> <li>• Add License and Revenue Branch as point of contact, with Wildlife Branch as responsible for disposition of barred owls.</li> </ul>                                                                                                                                                |
| (h)(7)                    | (h)(6)                | <ul style="list-style-type: none"> <li>• Add "or fully protected" according to California designation.</li> </ul>                                                                                                                                                                                                                                                                                                                                             |
| (h)(9)                    | (h)(8)                | <ul style="list-style-type: none"> <li>• Add "of any other raptor species" to clarify that following provisions regarding carcasses are for raptors other than eagles.</li> </ul>                                                                                                                                                                                                                                                                             |
|                           | (h)(8)(A)             | <ul style="list-style-type: none"> <li>• Add License and Revenue Branch as point of contact, with Wildlife Branch as responsible for disposition of any bird carcass to be delivered to the Department.</li> <li>• Revise for clarification the delivery of frozen raptor carcasses to the Department.</li> </ul>                                                                                                                                             |
|                           | (h)(8)(E)             | <ul style="list-style-type: none"> <li>• Delete (D) and re-write as (E).</li> <li>• Revise provisions regarding taxidermy, that only the licensee may possess the mounted bird.</li> <li>• Upon expiration of the license or the death of the licensee, the mounted bird must be returned to the Department.</li> <li>• Add License and Revenue Branch as point of contact, with Wildlife Branch as responsible for disposition of the mount.</li> </ul>      |
| (h)(10)(A)2.              | (h)(9)(A)2.           | <ul style="list-style-type: none"> <li>• Add License and Revenue Branch as a point of contact, and clarify that the disposition of a recaptured and unwanted bird will be determined by Wildlife Branch.</li> </ul>                                                                                                                                                                                                                                           |
| (h)(12)                   | (h)(11)               | <ul style="list-style-type: none"> <li>• Clarify the type of band as seamless "metal" bands.</li> <li>• Delete "licensed falconers" and add "persons or entities" to clarify that there are other types of permittees who can legally possess raptors.</li> </ul>                                                                                                                                                                                             |
| (h)(14)                   | (h)(13)(B)            | <ul style="list-style-type: none"> <li>• Transfer of raptors to a federal Propagation Permit shall be reported on the falconer's report to the Department.</li> </ul>                                                                                                                                                                                                                                                                                         |
| (i)(1)                    | (i)(1)                | <ul style="list-style-type: none"> <li>• Clarify that a goshawk captured in the wild in California be banded with a permanent, nonreusable, numbered USFWS leg band.</li> <li>• Add language to clarify that peregrine, gyrfalcon or Harris's hawk (not allowed for wild capture in California) that are legally acquired and imported into California also get a permanent, nonreusable, numbered USFWS leg band if they do not already have one.</li> </ul> |
| (i)(1)(A)                 | (i)(1)(A)             | <ul style="list-style-type: none"> <li>• Revise to designate that License and Revenue Branch distribute "new or replacement permanent, nonreusable, numbered USFWS leg" bands, and shall report banding data to the USFWS.</li> </ul>                                                                                                                                                                                                                         |
| (i)(2)                    |                       | <ul style="list-style-type: none"> <li>• Delete subsection regarding lost or removed bands here, and incorporate into other subsections.</li> </ul>                                                                                                                                                                                                                                                                                                           |
|                           | (i)(2)                | <ul style="list-style-type: none"> <li>• Add provision that captive bred raptors listed under MBTA need a seamless metal band. Added to comply with federal regulations.</li> </ul>                                                                                                                                                                                                                                                                           |
| (i)(3)                    |                       | <ul style="list-style-type: none"> <li>• Delete subsection regarding rebanding here, and incorporate into other subsections.</li> </ul>                                                                                                                                                                                                                                                                                                                       |

| Current Subsection | New subsection | Reason for the Proposed Amendment Revision, Addition, or Deletion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                    | (i)(3)-(4)     | <ul style="list-style-type: none"> <li>• Add language to include lost or removed bands and rebanding provisions. Revision was made to mirror the federal regulation that allows the falconer to remove and reband birds under certain circumstances.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| (j)(1)(C)          | (j)(1)(C)      | <ul style="list-style-type: none"> <li>• Revise to allow supervision of raptors by non-licensed falconers (e.g. spouse, family member, etc.) while the raptor is outside.</li> <li>• Specify a minimum age of 12 which is the same minimum age for an apprentice class.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (j)(1)(E)          | (j)(1)(E)      | <ul style="list-style-type: none"> <li>• Clarify the requirement for an inspection of raptor facilities and associated fees for facilities moved to a new location.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| (j)(3)             | (j)(3)         | <ul style="list-style-type: none"> <li>• Clarify that new applicants, <b><u>including prior licensees whose</u></b> license has been expired more than 5 years, are required to have their facilities inspected.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                    | (j)(3)(A)      | <ul style="list-style-type: none"> <li>• At the Commission's request, delete the word "premises" and add "facilities" clarifying that inspections are applicable to the raptor "facilities" as described in this subsection.</li> <li>• At the Commission's <b><u>falconers'</u></b> request, add language that the Department <b><u>may enter the facilities only when the licensee is present. Add additional language making it clear that licensees refusing to allow inspection or attempting to avoid inspection by repeatedly being unavailable risk suspension of their license. Add language allowing the Department to reinstate a suspended license upon successful completion of an inspection with no violations of these regulations or other license conditions. These provisions are necessary to accommodate falconer requests that they be present, while facilitating timely inspections of falconry facilities.</u></b> Department will make a reasonable attempt to contact licensee prior to conducting the inspection. (Note: it is the responsibility of the licensee to assure that the department's contact information is current.)</li> </ul> |
| (j)(3)(B)          | (j)(3)(B)      | <ul style="list-style-type: none"> <li>• Clarify that an original signature of the property owner on the permission letter is required if the raptor facilities are located on property not owned by the licensee.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections: 200, 202, 203, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1050, 1054, 1530, 1583, 1802, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150, and 10500, Fish and Game Code.

Reference: Sections: 395, 396, 713, 1050, 3007, 3031, 3503, 3503.5, 3511, 3513, and 3801.6 Fish and Game Code. Title 50, Code of Federal Regulations, Parts 21.29 and 21.30, and California Penal Code Section 597.

(c) Specific Technology or Equipment Required by Regulatory Change: None.

(d) Identification of Reports or Documents Supporting Regulation Change: None.

(e) Public Discussions of Proposed Regulations Prior to Notice publication: None.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

During and since the previous update of the falconry regulations in 2013, the public and licensed falconers provided recommendations for amendments to the regulations. Those recommendations that were accepted are enumerated in the ISOR. Some alternatives were rejected for the following reasons (subsection citations are to the revised numbering of the amended text):

- ~~§670(a)(2): A valid original hunting license and falconry license are the only documents required to practice falconry. If other documents are required, they should be specified by the Department.~~  
Rejected: Other documentation that may be required is noted throughout the regulation, for example, permission to fly on private land, documentation that falconer is assisting in rehabilitation, permission to fly another falconer's bird, etc.
- §670(b)(12) Establish a three year license to replace the current single year license.  
Rejected: Hunting regulations are set by the license year, which is the 12 month period starting July 1 and ending the following June 30, and is the same as the falconry license term, or federal regulatory year. All licenses, tags, reporting requirements, and permits issued by the Department are established for a period of one year.
- §670(b)(13): Definition for "non-native raptor" should include hybrid raptors.  
Rejected: The Department does not consider hybrids as non-native in all cases.
- §670(d): Falconers cannot "ensure" that their raptors will not "take state or federally listed threatened, endangered, or candidate wildlife, or wildlife designated as fully protected within the State of California." The Department should provide some relief from this no-take provision.  
Rejected: The new California falconry regulations closely follow the requirements of the Federal Regulations with respect to the "no-take" rule. The falconer is instructed in the Federal regulations to identify the location of protected species and avoid flying the raptor in that location. In the event that



unintended take occurs, both regulations provide that the falconer immediately report the take to appropriate federal and state authorities.

- **Rejected: The Federal Regulations include language about ensuring take of threatened or endangered species does not occur. However, to be clear, language was added to the proposed regulations that clarifies that take of threatened, endangered, candidate wildlife, or wildlife designated as fully protected is not authorized by a falconry license.**
- §670(e)(1)(D): Include ability for a non-US citizen to use "equivalent experience" in place of a current license when seeking a California license.  
**Rejected:** All that is required to obtain a California falconry license is passing the falconry examination which demonstrates basic knowledge, **and passing a facility inspection.** Other documentation may be used to demonstrate the class level of the licensee with discretionary approval of the Department.
- §670(e)(4): Include some exemption for practicing falconry with an expired license in case the Department is late processing.  
**Rejected:** The Department has not been tardy issuing licenses since administering the program.
- §670(e)(4): Add provision for Department to collect back fees if the individual continues to practice falconry without a license.  
**Rejected:** The penalties for illegally practicing falconry without a license (as with hunting, fishing, etc.) are sufficient.
- §670(e)(5): Change to read, "A nonresident licensed falconer or non-U.S. citizen licensed falconer may 'transport their legally held raptors to' temporarily practice falconry in California for up to 120 calendar days without being required to obtain a California falconry license."  
**Rejected:** The insertion of "transport their legally held raptors to" will not change or clarify the current provision.
- §670(e)(6): Strike "at its sole discretion". If a falconer meets the requirements and qualifications for the class described in these regulations the licensee should be granted a license for that class.  
**Rejected:** The Department now has oversight of the falconry program in California, and has the sole authority to determine if a falconer meets the specified requirements for any falconry class.
- §670(e)(6)(A)2: Consider additional oversight of apprentice program.  
**Rejected:** The current oversight of the apprentice program mirrors that of the federal regulations. No evidence that additional oversight is needed.
- §670(e)(6)(A)4: Change to read, "An Apprentice falconer may only capture from the wild or possess a passage red-tailed hawk or an American kestrel of any age."  
**Rejected:** 50 CFR 21.29(c)(2)(i)(E) states that the apprentice "may take raptors less than 1 year old, except nestlings." This same language is proposed as an addition to this subsection.
- §670(e)(6)(A)4.,(B)2. and (C)1.: In each subsection for Apprentice, General and Master class, it says, "Apprentice/General/Master falconer must maintain written proof of legal acquisition." This is redundant. It is elsewhere stated that all falconers must report disposition of falconry raptors to the Department in a timely manner.

Rejected. The Department is requiring written documentation of legal acquisition to be on-hand so the origin of all birds may be determined. When asked by law enforcement they must produce a paper record.

- §670(e)(6)(B): The possession limits of raptors should be reduced, an experienced falconer can handle two birds, three at most.

Rejected. Language in state regulations is consistent with federal regulations. There is no evidence that more raptors in possession equates to reduced care. The Department will retain existing language.

- §670(e)(6)(C)2.i.: Falconers wanted to add "... captured from the wild in California pursuant to Fish and Game Code 3511, but ..."

Rejected. Section 3511(a)(1) FGC also states "No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected bird." The insertion of the reference to FGC 3511 in the regulation would be repetitive and is presently cited in Authority and Reference.

- §670(e)(6)(C)2.ii.: Delete the portion of the provision regarding "eagles ... transferred from a rehabilitation facility" thus allowing Master falconer possession of a rehabilitated eagle.

Rejected: Possession of eagles with specified origins (not caught from the wild in California), from a permitted source, and with proof of legal acquisition, is clearly stated in subsections (e)(6)(C)2. i.-iii. A Master falconer may possess any eagle (except bald eagles) within those qualifications. Section 679 further provides for the permanent disposition from rehabilitation facilities of wildlife including birds.

- §670(e)(8)(B): Delete failure to comply with city and local ordinances as a reason for denial of a new or renewal license.

Rejected: Allowing denials, revocations or suspensions based on a violation of a city or county ordinance that constitutes a violation of the Fish and Game Code, regulations related to raptors in Title 14, or Penal Code Section 597, protects birds and the public by preventing persons who have not followed such ordinances from holding a Department-issued license.

- §670(e)(9): The falconers disagree with the penalties for violation and propose that they should be more in line with the hunting regulations section that deals with license suspension and revocation.

Rejected. The Department does not support a change to these provisions, which are uniquely tied to the falconry license and the possession of living raptors.

**However, new language was added to the regulations that clarify what types of violations may result in a suspension or revocation.**

- §670(g): Proposed that trapping raptors at any time of the year needs to be re-examined; that some species may breed when less than one year old, while still in their juvenile plumage; it is possible that someone might legally trap a juvenile hawk that in fact has a nest with eggs or young, unbeknownst to the trapper. In contrast, another commenter supported year-round take of raptors.

Rejected. The environmental review did not indicate there was an issue with take of wild raptors for use in falconry. Current regulations restrict age and number of young taken from a nest. Other restrictions are also instituted, such as limitations on the number of goshawks in the Tahoe Basin, limitations on the number of prairie falcons statewide, and seasonal restrictions for merlin. Therefore, the current language will be retained.

- §670(g)(7): Suggested that the Department add ferruginous hawk to the list of allowed species.  
Rejected. Due to species decline as described in the Final Environmental Document (FED) using best available population/trend data, the ferruginous hawk was taken off the list of allowed raptors. There is no new data to indicate a change from the conclusions of the FED.
- §670(g)(7)(A): Suggested removing the limit on Northern Goshawk in the Tahoe Basin.  
Rejected. Analysis in FED was based on best available population/trend data. There is no change in knowledge from when the FED was completed.
- §670(g)(7)(H): Suggested removing statewide limit on prairie falcon.  
Rejected. Analysis in FED was based on best available population/trend data. There is no change in knowledge from when the FED was completed.
- §670(g)(7)(K): Falconers suggested that the dates and terms of the Special Capture Drawing and Permit appear to exclude spring captures and should be changed.  
Rejected. A permit to obtain a raptor with quota is issued in July and will be valid for one year, including the following spring. However, new drawing dates move the drawing closer to the issuance of the special permit in June.
- §670(h)(3): Falconers want to be able to obtain healthy rehabilitated raptors from rehabilitation facilities.  
Rejected. This entire subsection is removed because it is inconsistent with other regulations in Title 14. Subsection 679(f)(4), Title 14, states: "If any [rehabilitated] animal cannot be released, it shall be transferred to a zoological garden, museum, college, university, or other education/research institution or wildlife exhibitor." The current provision does not include falconers.
- §670(h)(4): Notification of importation of a raptor into California is excessive.  
Rejected: These California provisions mirror those found in the federal regulations 50 CFR 21.29, 14 (ii)(A) through (E).
- §670(h)(9)(D): Falconers want to modify the limitations on possession of birds to say, "Possession of the mounted raptor will not count against the possession limit of the falconer."  
Rejected. The clarification is unnecessary, the Department has not and will not count dead birds as a part of the possession limit described in regulation "for falconry purposes." The possession of a carcass, parts, or a mounted bird is permitted by a falconer provided that the license is not expired. After expiration, or upon the death of the falconer, the mounted bird must be returned to the Department for disposition. No other person may possess the mount.
- §670(h)(13)(C): Apprentice falconers should be able to work as sub-permittee for abatement activities.  
Rejected: Although a change to federal abatement regulations is proposed with the USFWS, nothing has been approved.
- §670(i): Consider specialized banding of all falconry raptors.  
Rejected: Though the Department considers this a worthy consideration, this is outside of scope of this regulatory rulemaking.
- Address option of requiring a signed-off validation by agency staff (CDFW, U.S. Fish and Wildlife Service) as part of reporting take in the future, similar to the process for completing deer tags.

Rejected: Outside of scope of this regulatory rulemaking.

- Address the option for allowing depredating raptors (those captured under federal Migratory Bird Treaty Act depredation permits) to be placed with falconers.
- Rejected: Outside of scope of this regulatory rulemaking.

(b) No Change Alternative:

The falconry regulations were last amended in 2013 to conform to federal guidelines which required states to adopt their own rules governing the sport. At that time it was understood by the Commission, falconers, and the public that the new California regulations would need updating and amending. The "No Change" alternative would not update the regulations and would not meet this expectation.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment. Therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

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

The Commission does not anticipate significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations amend the existing rules for the sport of falconry, primarily for recreational purposes.

(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 significant impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing~~

businesses, or the expansion of businesses; and no benefits to the health and welfare of California residents, or to worker safety or to the state's environment. The proposed regulations affect a limited number of falconers in California and therefore are unlikely to create or eliminate jobs, or result in the expansion or elimination of existing businesses.

**The Commission does not anticipate any significant impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses. The proposed regulations are not anticipated to directly affect the health and welfare of California residents. The proposed regulations are in accord with the broad aims of resource management but the cumulative effects are anticipated to be neutral to the environment. The proposed regulations affect a limited number of falconers in California (there are approximately 615 licensed falconers in California) and therefore are unlikely to impact the creation or elimination of jobs, or the expansion or elimination of existing businesses, the health and welfare of California residents, or the State's environment.**

(c) Cost Impacts on a Representative Private Person or Business:

The proposed amendments do not impose any additional fees or costs to private persons involved in the sport of falconry.

(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

VII. Economic Impact Assessment

**Approximately 615 people have falconry licenses in California. Because the proposed regulations affect a limited number of people, the proposed regulations are unlikely to impact the creation or elimination of jobs, or the expansion or elimination of existing businesses, the health and welfare of California residents, or the State's environment.**

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

**Approximately 615 people have falconry licenses in California. Because the proposed regulations affect a limited number of people in California,**  
The cumulative effects of the changes statewide are expected to be neutral with regard to the creation or elimination of jobs within the State.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

**The proposed regulations affect approximately 615 licensed falconers in California; therefore** the cumulative effects of the changes statewide are expected to be neutral with regard to the creation of new businesses or the elimination of existing businesses within the State.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

**The proposed regulations affect approximately 615 licensed falconers in California; therefore** the cumulative effects of the changes statewide are expected to be neutral with regard to expansion of businesses currently doing business within the State.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

**The proposed regulations affect approximately 615 licensed falconers in California; therefore** the cumulative effects of the changes statewide are expected to be neutral with regard to the health and welfare of California residents.

- (e) Benefits of the Regulation to Worker Safety:

The proposed regulations do not address and will not affect worker safety.

- (f) Benefits of the Regulation to the State's Environment:

The cumulative effects of the changes statewide are expected to be neutral with regard to the state's environment.

- (g) Other Benefits of the Regulation:

The Commission anticipates benefits to licensed falconers in the current practice of the sport in California through clarified regulations.

## Informative Digest/Policy Statement Overview

### Amend Sections 670, Falconry, Title 14, California Code of Regulations (CCR).

The falconry regulations were last amended in 2013 to conform to federal guidelines which required states to adopt their own rules governing the sport. At that time it was understood by the Commission, falconers, and the public that the new California regulations would require updating and amendment to bring the regulations more in line with the current practice of falconry in California.

Numerous minor edits, renumbering, and clarifying changes are proposed; the more substantive changes include:

- Revising language to be more consistent with regulatory language standards (e.g., using lower-case for all headers, renumbering subsections, appropriate references for websites, replacing "regulatory year" with "license year," reference to expired licenses, references to federal regulations).
- Allowing falconers to complete reports using the Department's online reporting system found on the Department website at [wildlife.ca.gov](http://wildlife.ca.gov). Accordingly, no reporting to the USFWS is required and all references to the federal form 3-186A are removed.
- Clarifying what documentation is required to be carried when engaged in falconry activities.
- Amending the definitions (e.g., falconry, hacking, imping) to more accurately represent the activity.
- Improving instructions to falconers for procedures to avoid take of unauthorized wildlife and instructions to follow in the event that inadvertent take does occur, including fully protected species, and adopting "let it lay" language for non-protected species (meaning that if take occurs to let the raptor feed on the prey) and reporting requirements.
- Clarifying that a falconry license does not authorize the take of threatened or endangered species, candidate species or fully protected species.
- Clarifying licensee application procedures for resident, nonresident, tribal, and non-US citizen falconers.
- Adding language specifying that a tribal member with a valid falconry license issued from that member's tribe will be treated in the same manner as a nonresident licensed falconer.
- Clarifying that a tribal member that does not have a license must apply for a California license to practice falconry outside the jurisdiction of the tribe.
- Clarifying that the exam fee is charged for each multiple examination to recover the Department's reasonable costs.
- Adding an exam exemption for new resident falconers with a valid out-of-state falconry license.
- Clarifying when inspections are needed.
- Clarifying what is allowed and not allowed under an expired license, and what steps must be taken if a licensee wishes to continue to practice falconry.

- ~~Adding terms for renewal, at the Department's discretion, of a license where the licensee has been unlawfully in active practice without annual renewal and the payment of fees.~~
- Revising suspension and revocation clause to be more specific to the types of violations that would result in immediate action.
- Regarding written authorization required for certain activities, adding specifications that the authorization must be signed and dated with original signature.
- Identifying License and Revenue Branch as the point of contact for certain determinations, with the actual determination being made by Wildlife Branch in some instances.
- Clarifying the necessity of maintaining a continuous sponsorship of an apprentice; what period of time will be counted toward a total of 2 years sponsorship; and sponsor responsibility to assure that minimum qualifications have been met.
- Clarifying that falconers must maintain proper documentation of legal acquisition of birds and records retention is for 5 years only.
- Clarifying that take of northern goshawk outside of the Tahoe Basin does not have a limit.
- Adding language that identifies no need for a new inspection if the facilities shared by multiple falconers have passed a previous inspection.
- Clarifying when the administrative fee applies.
- Revising specifications for applying for the raptor capture drawing and obtaining a permit, including revision of deadline dates and times.
- Allowing falconers to remove bands or reband raptors under certain circumstances, if needed.
- Adding specific language allowing family members to watch raptors outside, but only if a specific age.
- Deleting the existing provision in 670 that raptors may be permanently transferred to a falconer from rehabilitation facilities. Section 679 provides for the permanent disposition from rehabilitation facilities of wildlife including birds.
- Clarifying that falconers may temporarily possess raptors from rehabilitation facilities for the purpose of conditioning for release back in to the wild.
- Adding text to clarify that non-native raptors or barred owls may not be released into the wild.
- Revising text regarding process and limitations for mounting raptor carcasses.
- Clarifying that unannounced inspections are applicable to falconry facilities.
- Revising language so that the Department will make a reasonable attempt to contact the licensee prior to conducting inspections.

#### **BENEFITS OF THE PROPOSED ACTION:**

The Commission anticipates benefits to licensed falconers in the current practice of the sport in California through clarified regulations.



## **EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:**

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the practice of falconry. No other State agency has the authority to promulgate such regulations. The Commission has searched the CCR for any regulations regarding falconry and has found no such regulation; therefore the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

## **BENEFITS OF THE PROPOSED ACTION:**

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of resource related recreational activities that serve in harmony with federal law respecting conservation of the living resources under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the management and maintenance of captive raptor populations to ensure their continued existence of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based regulations provides for the health and maintenance of sufficient populations raptors. The Commission additionally anticipates benefits to the captive breeding program as well as the management of the rehabilitation of raptors as needed. The proposed regulation changes are intended to provide increased health and maintenance to the State's falconry program from its recent transition for federal to states oversight. The Commission anticipates benefits to the environment by the sustainable management of California's resources.

**The amended ISOR adds statements of necessity to Section III (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary; other clarifying statements; and, minor editorial changes. These statements are entirely related to, and do not alter, the proposed regulatory text in Section 670.**

**In response to comments from the California Hawking Club, the Department, and other falconers, the Commission made revisions to the proposed regulatory text in two areas. Subsection 670(a) was revised to reduce the number of documents required to be carried by falconers when hunting. Falconers will be required only to have in their immediate possession a valid original falconry license, a valid original hunting license, and any required stamps, the same as required for any other hunter. Subsection 670(a)(4), which initially specified additional documents related to falconry, has been deleted.**

**Subsection 670(j)(3)(A) has also been revised to clarify that falconry facilities may be inspected only when the licensee is present. Falconers had expressed concern that Department staff entering their facilities without the owner present**

would place unnecessary stress on the birds. The Commission also added language to make it clear that attempts to avoid inspection by repeatedly being unavailable may result in license suspension. Licenses suspended under these circumstances may be reinstated upon completion of an inspection finding no violations of these regulations or any license conditions.

Errors in the ISOR have also been corrected: in subsection 670(e)(2)(C), the word "expired" should not have been added and is therefore deleted; and in subsection 670(e)(6)(C)1, the words "and eagles" should not have been added and are therefore deleted.

## Regulatory Text

Section 670 is hereby amended to read:

### **§ 670. Practice of Falconry.**

(a) ~~GENERAL PROVISIONS~~ General Provisions.

(1) Any person who wants to engage in falconry activities shall first apply for and be issued an annual falconry license from the department. ~~While engaged in falconry, a resident, nonresident or non-U.S. citizen shall carry an original permit, and all additional documentation or legible copies thereof, that authorize him or her to practice falconry in California.~~

(2) Except as provided in Section 12300, Fish and Game Code, it shall be unlawful for any person to engage in falconry in California unless they have in their **immediate possession a valid original falconry license, a valid original hunting license, and any required stamps.**

(3) Falconry activities shall be as provided by the Fish and Game Code and regulations provided herein.

(4) ~~While engaged in a falconry activity the licensee shall have in his/her possession and accessible the document(s) required for that activity as set forth herein: an original valid hunting license and required stamps, such as an upland game or state duck stamp along with a Federal migratory bird hunting and conservation stamp, when hunting with a raptor; permission to hunt on private property; permission to fly or hunt with another falconer's bird(s); permission to fly a raptor for rehabilitation purposes; a nuisance bird abatement permit; or, department approved exemption from banding when transporting or flying an un-banded raptor.~~

(5) Applicable regulations adopted by the U.S. Secretary of the Interior pursuant to the Migratory Bird Treaty Act (MBTA) and published in Title 50, Code of Federal Regulations, (CFR), Part 21 (Revised 11/05/2012) (Revised 07/02/2015), hereinafter referred to as 50 CFR 21, are hereby incorporated and made a part of these regulations. The department shall make these and the federal regulations available at [www.dfg.ca.gov/licensing/](http://www.dfg.ca.gov/licensing/).

(6) (5) Falconry applications and records as required by this section shall be kept on forms provided by the department and submitted to the department's License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834; or, submitted to the department's online reporting system website at [wildlife.ca.gov](http://wildlife.ca.gov).

(b) ~~FALCONRY DEFINITIONS~~ Definitions. For purposes of this section, the following definitions apply:

- (1) "Abatement" is the use of trained raptors to reduce human/wildlife conflicts.
- (2) "Captive-bred raptor" means the progeny of a mating of raptors in captivity, or progeny produced through artificial insemination.
- (3) "Capture" means to trap or capture or attempt to trap or capture a raptor from the wild.
- (4) "Eagles" includes golden eagle (*Aquila chrysaetos*), bald eagle (*Haliaeetus leucocephalus*), white-tailed eagle (*Haliaeetus albicilla*), and Steller's sea-eagle (*Haliaeetus pelagicus*).

(5) "Exotic raptor" is a raptor that has no subspecies occurring naturally in the wild in the United States and is not covered under the MBTA.

(6) "Eyes raptor" or "nestling" is a young raptor not yet capable of flight.

(7) "Falconry" means the possession, housing, trapping, transport, and use of raptors for the purpose of hunting or ~~free flight training~~.

(8) "Hacking" is the temporary or permanent release of a raptor held for falconry to the wild so that it may ~~survive on its own~~ gain experience and conditioning.

(9) "Hybrid raptor" means offspring of raptors of two or more distinct species listed in Title 50, CFR, Section 10.13.

(10) ~~"Imp"~~ "Imping" is to cut a broken or damaged feather and replace or repair it with an ~~undamaged another~~ feather.

(11) "Imprint" means a raptor that is hand-raised in isolation from the sight of other raptors from two weeks of age until it has fledged. An imprinted raptor is considered to be so for its entire lifetime.

(12) "License year" is the 12-month period starting July 1 and ending the following June 30, and is the same as the term "regulatory year" for determining possession and take of raptors for falconry as defined in 50 CFR 21.

~~(12)~~ (13) "Non-native raptor" is any raptor that does not naturally occur in the state of California.

~~(13)~~ (14) "Passage raptor" is a juvenile raptor less than one year old that is capable of flight.

~~(14)~~ (15) "Raptor" means any bird of the Order Falconiformes, Accipitriformes or Strigiformes, or a hybrid thereof.

~~(15) "Regulatory year" is the 12-month period starting July 1 and ending the following June 30, and is the same as the falconry license term.~~

(16) "Wild raptor" means a raptor removed from the wild for falconry. It is considered a wild captured raptor, no matter its time in captivity or whether it is transferred to other licensees or permit types.

~~(c) TAKE OF GAME SPECIES OR NONGAME BIRDS OR MAMMALS~~ Take of Game Species or Nongame Birds or Mammals. Every person using falconry raptors to hunt or take resident small game including upland game species, migratory game birds, or nongame birds or mammals in California shall abide by the laws and regulations related to authorizing hunting of such species, including but not limited to licenses, seasons, bag limits, and hunting hours.

(1) A licensee shall ensure, to the extent possible, that falconry activities do not result in unauthorized take of wildlife.

(A) If an animal is injured as a result of unauthorized take, the licensee shall remove the animal from the raptor and transport the injured animal to the nearest wildlife rehabilitation center.

(B) If an animal is killed as a result of an unauthorized take, the licensee may allow a falconry bird to feed on the kill but the licensee shall not possess the animal and shall leave the kill at the site where taken.

(2) The take shall be reported to the department, with the band or tag number of the species taken (if any), as set forth in subsection (f).

~~(d) TAKE OF STATE OR FEDERAL THREATENED OR ENDANGERED SPECIES.~~ Take of State or Federal Threatened or Endangered Species. A licensee shall ensure

~~that falconry activities do not cause the take of state or federally threatened or endangered wildlife, for example, by avoiding flying a raptor in the vicinity of the listed species. Any threatened or endangered bird, mammal, reptile or amphibian taken by a raptor without intent shall be removed from the raptor as soon as practical, and left at the site where taken if dead, or taken to the nearest wildlife rehabilitation center if injured.~~ This license does not authorize take of state or federally listed threatened, endangered, or candidate wildlife, or wildlife designated as fully protected within the State of California. Any take shall be reported by the licensee to the nearest U.S. Fish and Wildlife Service (USFWS) Ecological Services Field Office and the nearest department regional office ([www.dfg.ca.gov/regions/](http://www.dfg.ca.gov/regions/)) department's License and Revenue Branch within 10 calendar days of the kill. The licensee shall report his or her name, falconry permit license number, date, species and sex (if known) of the animal taken, and exact location of the kill pursuant to subsections (19), (19)(i) and (19)(ii), Title 50, Section 21.29, subdivision (f), Code of Federal Regulations as provided in 50 CFR 21.

(e) LICENSING Licensing.

~~(1) FALCONRY LICENSES~~ Falconry Licenses: A falconry license is issued in one of three falconry classes listed in subsection (e)(6) and may be issued to a:

~~(A) California resident, nonresident, or non-US citizen, who is applying for his/her first a new license;~~

~~(B) California resident or nonresident licensee who is applying to renew a lapsed license that has not been expired for more than 5 years;~~

~~(C) California resident licensee who is applying to renew a license that has not lapsed expired; and,~~

~~(D) Nonresident or non-U.S. citizen falconer who has a valid falconry license issued from another state or country and intends to establish permanent residency in California prior to becoming a resident.~~

(2) APPLICATION FOR LICENSE Application for License.

~~(A) The applicant for a new license, or lapsed license shall submit a completed New Falconry License Application with the nonrefundable fee, as specified in Section 703, to the address listed on the application.~~

~~(B) The applicant for a license renewal of a license that has not been expired for more than 5 years, shall submit a completed Falconry License Renewal Application with the nonrefundable fee, as specified in Section 703, to the address listed on the application.~~

~~(C) The department may issue new licenses and renew existing or lapsed expired licenses with the conditions it determines are necessary to protect native wildlife, agriculture interests, animal welfare, and/or human health and safety.~~

~~(A) SIGNED CERTIFICATION (D) Signed Certification.~~ Each application shall contain a certification worded as follows: "I certify that I have read and am familiar with both the California and U.S. Fish and Wildlife Service falconry regulation, CFR 50, Sections 21.29 through 21.30, and that the information I am submitting is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to cancellation of the application, suspension or revocation of a license, and/or administrative, civil, or criminal penalties. I understand that my facilities, equipment, or raptors are subject to unannounced inspection pursuant to ~~Section subsection~~ 670(j), Title 14, of the ~~CCR~~ California Code of Regulations. I certify that I

have read, understand, and agree to abide by, all conditions of this license, the applicable provisions of ~~FGC~~ the Fish and Game Code, and the regulations promulgated thereto. I certify that ~~I am not currently under any Fish and Wildlife license or permit revocation or suspension, and that there are no other legal or administrative proceedings pending that would~~ there are no pending or previous legal or administrative proceedings that could disqualify me from obtaining this license." The application shall be submitted with the applicant's original signature.

~~(B) EXPERIENCE~~ (E) Experience. The department shall consider an applicant's falconry experience acquired in California, as well as another state or country when ~~evaluating~~ reviewing an application for any class of license. The department shall determine which ~~level~~ class of falconry license is appropriate, consistent with the class requirements herein and the documentation submitted with the application demonstrating prior falconry experience.

~~(C) NONRESIDENT FALCONER ESTABLISHING PERMANENT RESIDENCY.~~ A nonresident falconer establishing permanent residency in California shall submit documentation of prior experience and any falconry license held from his/her previous state or country of origin along with the completed application. The department shall continue to recognize a new resident's falconry license issued from another state or country, until the license expires, or the department approves or denies the application, whichever comes first. If a new resident's license expires shortly before or shortly after he/she moves to California, he/she is allowed to practice falconry for up to 120 days without a California license according to ~~(5)(C)~~ below.

~~(3) EXAMINATION REQUIREMENT~~ Examination Requirement. Any person applying for his/her first Any applicant not possessing a valid falconry license, or required to apply for a new falconry license in California shall pass the falconry examination to demonstrate proficiency in falconry and raptor-related subject areas before being issued a license. An applicant shall correctly answer at least 80 percent of the questions to pass the examination. Any applicant who fails to pass the examination may take another examination no earlier than the next business day following the day of the failed examination. The applicant shall submit a nonrefundable Falconry Examination fee each time the applicant takes an examination.

(A) An applicant who meets one of the following criteria shall be exempt from taking the California falconry examination:

1. An applicant who provides documentation of successfully passing a federally approved examination in a state that has had its falconry regulations certified as specified in Title 50, CFR, Section 21.29 50 CFR 21, will not be required to take the examination in California if the applicant took the examination less than five years prior to submitting an application for a California falconry permit license.

2. The applicant is a nonresident or non-U.S. citizen falconer who has a valid falconry license issued from another state or country.

3. The applicant is a member of a federally recognized tribe and has a valid falconry license issued from that member's tribe.

(B) After successfully passing the falconry examination, the raptor housing facility, if any, of a new applicant shall pass an inspection and be certified by the department, pursuant to subsection (j), before a license may be issued.

(4) LAPSED LICENSES. If a license has lapsed for fewer than five years, the license may be renewed at the level held previously if the applicant provides proof of licensure at that level. If a license has lapsed for five years or more, the applicant shall successfully complete the California examination. Upon passing the examination, a license may be renewed at the level previously held if the applicant provides proof of licensure at that level.

(4) Expired License. A license for the practice of falconry expires and is not valid unless renewed annually with the required application form and payment of fees as specified in Section 703.

(A) It shall be unlawful for any person to practice falconry, including possession of falconry raptors, without a valid license in their possession.

(B) If a license has not been renewed for a period less than 5 years from the expiration date on the license, the license may be renewed at the class held previously if the applicant provides proof of licensure at that class.

(C) If a license has not been renewed for a period of more than 5 years from the expiration date on the license, it shall not be renewed. The applicant shall apply for a new falconry license and successfully complete the examination as set forth in subsection (e)(3). Upon passing the examination and the payment of the annual license fee a license may be issued at the class previously held if the applicant provides proof of prior licensure at that class.

(5) NONRESIDENTS OF CALIFORNIA AND NON-US CITIZENS Nonresidents of California and Non-US Citizens.

(A) A person who is a member of a federally recognized tribe and has a valid falconry license from that member's tribe shall be considered a nonresident licensed falconer for purposes of this subsection (e)(5).

(A)-(B) A nonresident licensed falconer or non-U.S. citizen licensed falconer may temporarily practice falconry in California for up to 120 consecutive calendar days without being required to obtain a California falconry license.

(B)-1. A nonresident licensed falconer or non-U.S. citizen licensed falconer may fly raptors held for falconry by practice falconry with raptors from a licensed California falconer, provided that signed and dated written permission authorization is given to the nonresident or non-U.S. citizen by the licensee. This The original written authorization must be carried with him/her while flying or transporting the licensee while in possession of the raptor.

(C)-2. A nonresident licensed falconer or non-U.S. citizen currently licensed falconer shall provide and thereafter maintain facilities and equipment for raptors in his/her the licensee's possession while temporarily practicing falconry in California. Temporary facilities shall meet the standards in these regulations, including but not limited to provisions described in subsection (j), and pursuant to Title 50, CFR, Section 21.29 50 CFR 21.

3. A nonresident licensed falconer or non-U.S. citizen licensed falconer may house raptors in his/her the licensee's possession at another licensed falconer's facilities while temporarily practicing falconry in California.

(C) A nonresident licensed falconer or non-U.S. citizen licensed falconer applying for a falconry license in California shall submit proof of a valid falconry license held from the

licensee's tribe, state or country along with the completed New Falconry Application and Fee and pass a facility inspection pursuant to subsection (j).

(D) A nonresident or non-US citizen applicant applying for a falconry license in California but not possessing a valid original falconry license from the applicant's tribe, state, or country of origin shall submit the completed New Falconry License Application and Fee, and pass the examination and pass a facility inspection pursuant to (e)(3) herein.

(6)-FALCONRY CLASSES Falconry Classes. There are three classes of licensed falconers in California: Apprentice falconer, General falconer, and Master falconer. The department at its sole discretion may issue a falconry license in one of these classes to an applicant who meets the requirements and qualifications for the class as described in these regulations.

(A)-APPRENTICE FALCONER Apprentice Falconer.

1. AGE Age. An applicant for an Apprentice falconer license shall be at least 12 years of age at the date of application. If an applicant is less than 18 years of age, a parent or legal guardian shall co-sign the application and shall be legally responsible for activities of the Apprentice falconer.

2. SPONSORSHIP Sponsorship. A sponsor is required for at least the first two years in which an Apprentice falconry license is held, regardless of the age of the Apprentice falconer. A sponsor shall be a Master falconer or a General falconer who has at least two years of experience at the General Falconer-level class. A sponsor shall certify in writing to the department that the sponsor will assist the Apprentice falconer, as necessary, in learning the husbandry and training of raptors held for falconry; learning the relevant wildlife laws and regulations; and determining what species of raptor is appropriate for the Apprentice falconer to possess; and will notify the department's License and Revenue Branch immediately if sponsorship terminates.

3. TERMINATION OF SPONSORSHIP Termination of Sponsorship. If sponsorship is terminated, an Apprentice falconer and ~~his/her~~ the Apprentice's sponsor shall immediately notify the department's License and Revenue Branch in writing. ~~For a license to remain valid, The license shall be valid only if~~ the Apprentice falconer shall ~~acquire-acquires~~ a new sponsor within 30 calendar days from the date sponsorship is terminated, and ~~provide~~ provides written notification, along with the new sponsor's certification ~~described in subsection (e)(6)(A)2,~~ to the department once a new sponsor is secured. Failure to comply with sponsorship requirements ~~will-shall~~ result in loss of qualifying time from the date sponsorship was terminated to the date of securing a new sponsor, and no subsequent license ~~will-shall~~ be issued until the required two years requirements of sponsorship have been fulfilled.

4. POSSESSION OF RAPTORS Possession of Raptors. An Apprentice falconer may possess for falconry purposes no more than one wild or captive-bred red-tailed hawk (*Buteo jamaicensis*) or American kestrel (*Falco sparverius*) at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession and only as long as the raptor in possession is trained in the pursuit of game and used in hunting. An Apprentice falconer may only capture from the wild or possess a passage red-tailed hawk or an American kestrel. The Apprentice may take raptors less than 1 year old, except nestlings. Apprentice falconers are not required to capture a wild raptor themselves; the raptor can be transferred to ~~him/her~~ the Apprentice by another licensee.



An Apprentice falconer may not capture from the wild or possess an eyas raptor or a raptor that is imprinted on humans. An Apprentice falconer must maintain written proof of legal acquisition.

~~5. INSPECTION OF FACILITIES~~ Inspection of Facilities. After successfully passing the falconry examination, the facility of an Apprentice applicant shall pass an inspection and be certified by the department, pursuant to subsection (j), before a license may be issued.

~~6. ADVANCEMENT FROM APPRENTICE CLASS~~ Advancement From Apprentice Class. An Apprentice falconer shall submit a completed Apprentice Falconer's Annual Progress Report, as specified in Section 703, to the address listed on the report. The report shall demonstrate that the Apprentice falconer has practiced falconry with a raptor at the Apprentice level-class for at least two years, including maintaining, training, flying, and hunting with the raptor for at least four months in each regulatory license year, and a summary of the species the Apprentice possessed, how long each was possessed, how often each was flown, and methods of capture and release. Within the report, the sponsor shall certify in writing to the department that the Apprentice falconer has met the requirements of these regulations. No falconry school program or education shall be substituted for the minimum period of two years of experience as an Apprentice falconer.

~~(B) GENERAL FALCONER~~ General Falconer.

~~1. AGE~~ Age. General falconers shall be at least 16 years of age. If an applicant is less than 18 years of age, a parent or legal guardian shall co-sign the application and shall be legally responsible for activities of the General falconer.

~~2. POSSESSION OF RAPTORS~~ Possession of Raptors. A General falconer may possess for falconry purposes any wild raptor species listed in subsection ~~(g)(5)~~ (g)(6), and any captive-bred or hybrid of any species of Order Falconiformes, Accipitriformes, or Strigiformes, or any legally acquired raptor from another state or country. ~~federally or state listed threatened or endangered species, and eagles.~~ A General falconer must maintain written proof of legal acquisition. A General falconer shall possess no more than three raptors for use in falconry at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession; and only two of these raptors may be wild-caught. Only eyas or passage raptors may be wild-caught; except American kestrel (*Falco sparverius*) or great horned owl (*Bubo virginianus*) may be captured at any age.

~~3. ADVANCEMENT FROM GENERAL CLASS~~ Advancement From General Class. A General falconer shall have practiced falconry with a raptor, including maintaining, training, flying, and hunting with the raptor, at the General level-class for at least five years before advancing to Master falconer. No falconry school program or education shall be substituted for the minimum period of five years of experience as a General falconer.

~~(C) MASTER FALCONER~~ Master Falconer.

~~1. POSSESSION OF RAPTORS~~ Possession of Raptors. A Master falconer may possess for falconry purposes any wild raptor species listed in subsection ~~(g)(5)~~ (g)(6), and any captive-bred or hybrid of any species of Order Falconiformes, ~~the Order~~ Accipitriformes, or ~~the Order~~ Strigiformes, or any legally acquired raptor from another state or country. ~~federally or state listed threatened or endangered species, and eagles.~~ A Master falconer must maintain written proof of legal acquisition. A Master falconer

may possess any number of raptors except ~~he/she~~ the licensee shall possess no more than five wild-caught raptors for use in falconry at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession. Only eyas or passage raptors may be wild-caught; except American kestrel (*Falco sparverius*) or great horned owl (*Bubo virginianus*) may be captured at any age.

2. POSSESSION OF EAGLES Possession of Eagles. A Master falconer may possess up to three eagles with proof of legal acquisition at any one time, except no bald eagle may shall be possessed.

i. Eagles may shall not be captured from the wild in California, ~~but may~~

ii. Eagles may only be obtained from ~~captive breeders, imported from another state, or transferred from a rehabilitation facility if the eagle is not releasable~~ a permitted source.

iii. Eagles originating in California from a licensed California rehabilitation facility may be temporarily transferred to a Master Falconer for the purpose of rehabilitation in accordance with 50 CFR 21, and with subsection (h)(3) herein.

iv. The department shall authorize in writing which species of eagles a Master falconer may possess pursuant to ~~Title 50 CFR Section 21.29(c)(iv)~~ 50 CFR 21. The Master falconer shall submit a written request for this authorization and include a resume of ~~his/her~~ the licensee's experience in handling large raptors such as eagles, and two letters of recommendation to the department's License and Revenue Branch. The resume documenting experience shall include information about the type of large raptor species handled, such as eagles or large hawks, the type and duration of the activity in which experience was gained, and contact information for references who can verify the experience. The two letters of recommendation shall be from persons with experience handling and/or flying large raptors. Each letter shall be ~~a signed, original that describes~~ dated, signed in ink with an original signature and shall describe the author's experience with large raptors, ~~and may include but is not limited to including but not limited to,~~ handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter shall also assess the licensee's ability to care for eagles and fly them in falconry. The department may deny a request for a Master falconer to possess an eagle if the applicant has less than the equivalent of two years of experience handling large raptors or, at the department's discretion, the department determines that based on a letter of recommendation the applicant is not capable of caring for the eagle or flying it in falconry.

(7) FEES Fees. The base fee for a falconry license is specified in Fish and Game Code Section 396. Falconry related fees are specified in Section 703 of these regulations for the following:

(A) APPLICATION Application. An applicant shall submit a nonrefundable Falconry Application Fee when applying for a new license or renewing a license.

(B) EXAMINATION Examination. An applicant shall submit a nonrefundable Falconry Examination Fee each time ~~he or she applies to take~~ the applicant takes an examination.

(C) INSPECTION Inspection. An applicant or licensee shall submit a nonrefundable Inspection Fee prior to the department inspecting ~~his/her~~ the licensee's facilities, raptors, if present, and equipment. The Inspection Fee provides for inspections of up to five enclosures.

1. If a facility has more than five enclosures, an additional inspection fee is required for every additional enclosure over five.

2. If the applicant or licensee is sharing an existing raptor facility with another licensed falconer, and possesses proof of a passed inspection, there is no requirement for an additional inspection.

(D) ~~RE-INSPECTION~~ Re-inspection. An applicant shall submit an additional nonrefundable Inspection Fee when his or her facility has failed to pass a previous inspection.

(E) ~~ADMINISTRATIVE PROCESSING~~ Administrative Processing. An applicant shall submit a nonrefundable Administrative Processing Fee for each ~~Federal Form 3-186A Resident Falconer Raptor Capture, Recapture and Release Report~~ form submitted to the department's License and Revenue Branch when not using the USFWS's electronic department's online reporting system on-line at <https://migbirdapps.fws.gov/Falconry/srv/index.htm>.

(F) ~~SPECIAL RAPTOR CAPTURE DRAWING APPLICATION~~. An applicant shall submit a nonrefundable Special Raptor Capture Drawing Application Fee when applying to capture a species with a capture quota.

(G) ~~SPECIAL RAPTOR CAPTURE PERMIT~~. A successful applicant shall submit the appropriate nonrefundable Special Raptor Capture Permit fee to receive the permit.

(8) ~~DENIAL~~ Denial. The department may deny the issuance of a new license or a renewal of an existing or-lapsed expired license if:

(A) The applicant or licensee has failed to comply with regulations adopted pursuant to the Fish and Game Code related to raptors, Fish and Game Code Section 1054, or Penal Code Section 597; or

(B) The applicant or licensee has failed to comply with any provision of any statute, regulation, rule or ordinance existing in any other state or in any city, county, or other local governing entity in any other state, that is related to the care and licensing of raptors, so long as the failure to comply would constitute a violation of the Fish and Game Code, regulations related to raptors in Title 14, or Penal Code Section 597;

(C) The applicant or licensee has failed to comply with any provision of any federal statute, regulation, or rule that is related to the care and licensing of raptors, including but not limited to ~~Title 50, CFR Sections 21.29 and 21.30~~ 50 CFR 21.

(D) The department shall deny the issuance of a license or renewal of an existing license if the applicant or licensee fails to submit all required items or perform any task necessary to obtain a license. Before denying an application for this reason, the department shall notify the applicant in writing that the application is deficient. The applicant may supplement an application by providing the missing required information or materials. If sent by U.S. mail or other carrier, these materials shall be postmarked no later than 30 calendar days after the date of the proof of service accompanying the department's notification. If the 30 calendar day deadline falls on a weekend or holiday the submission of additional information or materials will be accepted until the close of business on the first state business day following the deadline to submit additional information or materials. The department may extend this deadline for good cause. If denied, the applicant or licensee may submit a new application at any time.

(9) ~~SUSPENSION AND REVOCATION~~ Suspension and Revocation. Any license issued pursuant to these regulations may be suspended or revoked at any time by the

department for failure to comply with the Fish and Game Code or regulations adopted pursuant to the Fish and Game Code related to raptors, Fish and Game Code Section 1054, or Penal Code Section 597. If the licensee has been convicted in a court of competent jurisdiction of violating one of these provisions, the suspension or revocation shall take effect immediately if the violation pertains to conduct that threatens native wildlife, agricultural interests of this state, the welfare of the birds, or the safety of the public, or if the licensee has been previously convicted of violating the provisions described above or has had his or her license previously suspended or revoked. If the licensee has not been convicted, the suspension or revocation shall take effect when the time to request an appeal pursuant to ~~subsection (e)(11)~~ as described herein has expired. A timely request for an appeal will stay the department's suspension or revocation if the licensee was not convicted as described above.

~~(10) PROOF OF SERVICE~~ Proof of Service. All notices sent from the department to ~~an~~ a falconry applicant or licensee pursuant to ~~subsections (e)(8) or (e)(9)~~ as described herein shall include a proof of service that consists of a declaration of mailing, under penalty of perjury, indicating the date of mailing the department's notification, denial, or other correspondence.

~~(11) APPEAL~~ Appeal. Any applicant or licensee who is denied a license, an amendment to an existing license or has a license suspended or revoked by the department pursuant to these regulations may appeal that denial, amendment, suspension, or revocation by filing a written request for an appeal with the commission. If sent by U.S. mail or other carrier, a request for an appeal shall be postmarked no later than 30 calendar days after the date of the proof of service accompanying the department's notice of denial, suspension, or revocation. If submitted electronically or by facsimile, it shall be received no later than 30 calendar days after the date of the proof of service. The commission shall not accept a request for an appeal that is submitted after the 30 calendar day deadline to request an appeal. If the 30 calendar day deadline falls on a weekend or holiday the request for appeal will be accepted until the close of business on the first state business day following the 30 calendar day deadline to submit a request for appeal.

~~(12) RECORD KEEPING~~ Record Keeping. A licensee shall retain copies of all falconry-related records (hard copy or electronic) including but not limited to the applicant's falconry license, raptor transfer records, capture and release and disposition records, import or export documentation, sponsorship information, annual reports submitted to the department, and all health records of raptors possessed pursuant to the falconry license (Falconry Records) for at least five years ~~after the expiration of the license~~.

~~(13) NAME OR ADDRESS CHANGE~~ Name or Address Change. The licensee shall notify the department's License and Revenue Branch, in writing, of any change of name or mailing address within 30 calendar days of the change. Facility address changes must be reported within five ~~calendar~~ business days of the change.

~~(f) REPORTING REQUIREMENTS~~ Reporting Requirements.

~~(1) Licensees shall comply with USFWS's electronic reporting requirements on Federal Form 3-186A for all raptors possessed. Federal Form 3-186A can be accessed at the USFWS's electronic reporting system on-line at~~

~~https://migbirdapps.fws.gov/Falconry/srv/index.htm. If a licensee is unable to use the Form 3-186A electronic reporting system, he/she may submit a paper Form 3-186A by~~

mail, fax, or email to the department's License and Revenue Branch, or he/she may report over the telephone to the License and Revenue Branch. The information from the paper form or during a call will be entered into the USFWS's electronic reporting system by department staff, and the department shall charge an Administrative Processing Fee, as specified in Section 703, for each form completed.

(2) A licensee shall submit to the department's License and Revenue Branch a report using the Resident Falconer Raptor Capture, Recapture and Release Report, as specified in Section 703, within 10 calendar days of capture of a raptor from the wild or the release of a raptor back to the wild. The submission shall include information about the county of capture/release, date of capture/release, a description of the capture/release site, a description of the capture method, species information, and Latitude/Longitude coordinates of capture/release site. Capture, recapture and release in California may also be entered and reported electronically if the department offers an electronic reporting system. Licensee shall also report the capture and release by entering the required information on Form 3-186A in the USFWS's electronic reporting system within 10 calendar days of the capture.

(1) Licensees are required to report all raptor acquisition and disposition information using the Resident Falconer Raptor Capture, Recapture and Release Report within 10 calendar days to the department's online reporting system.

(A) For raptors acquired from the wild or released back to the wild, submission shall include information about the county of capture/release, date of capture/release, a description of the capture/release site, a description of the capture method, species information, and Latitude/Longitude coordinates of capture/release site.

(B) If a licensee is unable to use the department's online reporting system, the licensee may submit relevant forms by mail, fax, or email to the department's License and Revenue Branch, or the licensee may report over the telephone to the License and Revenue Branch. The information will be entered into the department's online reporting system by department staff, and the department shall charge a nonrefundable Administrative Processing Fee, as specified in Section 703, for each form entered.

(3) (2) Upon applying for license renewal or within 10 calendar days after expiration of the license, whichever comes first, a licensee shall submit to the department, an annual report using the Falconry Hunting Take Report, as specified in Section 703, summarizing the number and type of prey species taken while hunting, counties hunted, and birds used in hunting during the most recent license year, as well as any inadvertent take of non-target wildlife.

(4) (3) Upon applying for license renewal or within 10 calendar days after expiration of the license, whichever comes first, an Apprentice falconer shall submit to the department's License and Revenue Branch an annual report using the Apprentice Falconer's Annual Progress Report, as specified in Section 703. The report shall be signed and dated by both the Apprentice falconer and sponsor. The report will be used by the department to determine qualifying experience for future licenses.

(g) CAPTURING RAPTORS FROM THE WILD Capturing Raptors From the Wild.

(1) A Resident-resident licensed falconer may not capture more than two raptors from the wild during the regulatory license year and only as authorized for each falconry class license.

(2) A ~~Nonresident~~ nonresident licensed falconer with a license to practice falconry in a state ~~certified according to Title 50, CFR, Section 21.29(b)(10)~~ may request to capture within California one wild raptor of the species specified in subsection ~~(g)(7)~~ (g)(8), excluding species with capture quotas, and shall submit to the department's License and Revenue Branch a complete Nonresident Falconer Application for Raptor Capture Permit, as specified in Section 703. The permit issued shall be valid beginning on July 1 and ending on June 30 of the following year, or if issued after the beginning of the permit year, for the remainder of that permit year. Whether successful or unsuccessful in capturing a raptor, the nonresident licensed falconer shall submit a complete Nonresident Falconer Raptor Capture Permit and Report, as specified in Section 703. Nonresidents shall only capture raptors from the wild in accordance with the conditions of the permit. Nonresidents that request to capture species with capture quotas must submit an application for the random drawing, as specified in subsection ~~(g)(7)(K)~~ (g)(9).  
(3) Non-U.S. citizens are not eligible to capture any California wild raptor.

~~(3)-(4)~~ Raptors may be captured by trap or net methods that do not injure them. The licensee shall identify all set traps with the name and address of the licensee and shall check such traps at least once every 12 hours, except that all snare type traps shall be attended at all times when they are deployed.

~~(4)-(5)~~ A licensee shall be present during the capture of a raptor from the wild; however another General or Master licensed falconer may capture the raptor for the licensee. A licensee's presence during capture includes attendance of snare traps, or attendance while checking non-snare traps at least once every 12 hours. If a licensee has a long-term or permanent physical impairment that prevents ~~him/her~~ the licensee from attending the capture of a raptor for use in falconry, then another licensee may capture a bird for the licensee without ~~him/her~~ the licensee being present. The licensee is responsible for reporting the capture. The raptor will count as one of the two raptors the licensee is allowed to capture in that regulatory license year.

~~(5)-(6)~~ The following raptor species may be captured from the wild in California: Northern goshawk (*Accipiter gentilis*), Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), merlin (*Falco columbarius*), American kestrel (*Falco sparverius*), prairie falcon (*Falco mexicanus*), barred owl (*Strix varia*), and great horned owl (*Bubo virginianus*).

~~(6)-(7)~~ No more than two nestlings of the species allowed for capture from the wild may be captured by the same General or Master licensee during the regulatory license year. In no case may all nestlings be captured and removed from any nest. At least one nestling shall be left in a nest at all times.

~~(7)-(8)~~ The following restrictions apply to the total, cumulative capture of wild raptors among all licensees. These restrictions are in addition to the limitation of two wild raptors per licensee during the regulatory license year.

(A) NORTHERN GOSHAWK Northern Goshawk.

No more than one northern goshawk may be captured within the Lake Tahoe Basin during the regulatory license year. There are no restrictions on the cumulative number or location of Northern goshawk captured in the balance of the state during the license year.

1. The Lake Tahoe Basin area is defined as those portions of Placer, El Dorado, and Alpine counties within a line: beginning at the north end of Lake Tahoe, at the

California-Nevada state line approximately four miles north of Stateline Point in the near vicinity of Mt. Baldy; westerly along the Tahoe Divide between the Lake Tahoe and Truckee River drainages to the intersection of the north line of Section 36, T17N, R17E, MDM; west along said north section line to the section corner common to section 25, 26, 35, and 36, T17N, R17E, MDM; south approximately one mile along the common section line; southwesterly to the intersection of the Tahoe Divide and Highway 267 in the near vicinity of Brockway Summit; southwesterly in the near vicinity of the Tahoe Divide to Mt. Pluto; south to Mt. Watson; westerly approximately two miles to Painted Rock; southerly approximately two miles along the Tahoe Divide to the intersection of Highway 89; southwesterly along the Tahoe Divide to Ward Peak; southerly approximately 30 miles along the Tahoe Divide to a point on the Echo Lakes Road; southeasterly along said road to Old Highway 50; southeasterly along Old Highway 50 to the intersection of the Echo Summit Tract Road; southerly along said road to Highway 50; easterly along Highway 50 to the intersection of the South Echo Summit Tract Road; southerly along said road to the Tahoe Divide; southerly along the Tahoe Divide past the Alpine county line to Red Lake Peak; northerly along the Tahoe Divide past Monument Peak to the California-Nevada state line; north on the state line to the point of beginning. NOTE: the area described above includes the entire basin of Lake Tahoe within California.

(B) ~~COOPER'S HAWK~~ Cooper's Hawk. No restrictions on cumulative number or location of Cooper's hawks captured statewide during the regulatory-license year.

(C) ~~SHARP SHINNED HAWK~~ Sharp-shinned Hawk. No restrictions on cumulative number or location of sharp-shinned hawks captured statewide during the regulatory license year.

(D) ~~RED TAILED HAWK~~ Red-tailed Hawk. No restrictions on cumulative number or location of red-tailed hawks captured statewide during the regulatory-license year.

(E) ~~RED SHOULDERED HAWK~~ Red-shouldered Hawk. No restrictions on cumulative number or location of red-shouldered hawks captured statewide during the regulatory license year.

(F) ~~MERLIN~~ Merlin. No restrictions on cumulative number or location of merlins captured statewide during the regulatory-license year. Merlins may be captured only from August 15 through February 28 every year.

(G) ~~AMERICAN KESTREL~~ American Kestrel. No restrictions on cumulative number or location of American kestrels captured statewide during the regulatory-license year.

(H) ~~PRAIRIE FALCON~~ Prairie Falcon. No more than 14 prairie falcons may be captured per regulatory-license year.

(I) ~~BARRED OWL~~ Barred Owl. No restrictions on cumulative number or location of barred owls captured statewide during the regulatory-license year.

(J) ~~GREAT HORNED OWL~~ Great Horned Owl. No restrictions on cumulative number or location of great horned owls captured statewide during the regulatory-license year.

(K) ~~RANDOM DRAWING~~.

(9) Special Raptor Capture Permit Drawing. A random drawing shall be held by the department to ~~determine distribution of~~ distribute Special Raptor Capture Permits to capture species with quotas, which include one Northern goshawk in the Tahoe Basin and prairie falcons from the wild as specified in subsection ~~(g)(7)~~ (g)(8). An applicant may be a resident and/or nonresident and must possess a valid General or Master

falconry license at the time of application to enter the drawing. Non-U.S. citizens are not eligible to enter the drawing.

1. ~~(A) A Resident~~ A resident applicant shall not submit more than two drawing applications each ~~regulatory license~~ year.

2. ~~(B) A Nonresident~~ A nonresident applicant shall not submit more than one drawing application each ~~regulatory license~~ year.

3. ~~(C) Applicants shall submit to the department's License and Revenue Branch~~ Licensees may apply through the department's Automated License Data System at license agents, department license sales offices, or on the department's website, using a Special Raptor Capture Drawing Application, as specified in Section 703. Each application submitted must specify the falconer's name, contact information, GO ID number, the species he/she the applicant is applying for to capture from the wild, and include the ~~The applicant shall submit a nonrefundable Drawing Application Fee, as specified in Section 703 for each drawing application submitted.~~

4. ~~(D) Applications must be received by midnight 11:59pm, Pacific Standard Time, on Jan. 31-May 15 each year. through the department's Automated License Data System. Incomplete, late and ineligible applications, and applications submitted without the fee, shall not be included in the drawing.~~

5. ~~(E) Permits are awarded according to an applicant's choice and computer-generated random number (lowest to highest) drawing.~~ Successful applicants and a list of alternates for each species and/or area shall be determined by random drawing within 10 business days following the application deadline date. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible.

6. ~~(F) Successful and alternate applicants will be mailed notification as soon as practical notified. Unsuccessful applicants shall not be notified by mail. Upon receipt of the notification, the~~ The successful applicant shall submit the Raptor Capture Permit Fee, as specified in Section 703, to the department's License and Revenue Branch by 5:00 p.m. on June 1-June 30 each year to claim the permit. If the deadline to submit the fee falls on a weekend or holiday, payment will be accepted until 5:00 p.m. on the first state business day following the deadline to submit payment. Unclaimed permits shall be awarded to alternates for that species and/or area after June 1 on an individual basis, in the order drawn.

7. ~~(G) A Special Raptor Capture Permit shall only be issued to a successful applicant who holds a General or Master falconry license that is valid for the same license year that the permit shall be is valid. Only the permit holder is entitled to capture a raptor, and the permit shall be in immediate possession of the permit holder during the capture. Permits are not transferable and are valid only for the species, area and period as specified on the permit.~~

8. ~~(H) A permit holder who successfully captures a Northern goshawk or prairie falcon shall immediately complete the capture portion of the permit and shall return the permit to the department's License and Revenue Branch or enter it on the department's online reporting system within 10 calendar days of the capture. The submission shall include information about the county of capture, date of capture, a description of the capture site, a description of the capture method, species information, and Latitude/Longitude coordinates of capture site. The capture may also be entered and reported electronically~~



if the department offers an electronic reporting system. The permit holder shall also report the capture by entering the required information on Form 3-186A in the USFWS's electronic reporting system within five calendar days of the capture.

9. ~~(I)~~ A permit holder who is unsuccessful in capturing a Northern goshawk or prairie falcon shall indicate "unsuccessful" on the report card portion of the permit and return it shall return the permit to the department's License and Revenue Branch within 10 calendar days of the close of the season expiration of the permit.

40. ~~(J)~~ The permit holder shall surrender his/her the permit to an employee of the department for any act by the permit holder that violates any raptor related provision of the Fish and Game Code, or any regulation of the commission adopted pursuant thereto, and any act on the part of the permit holder that endangers the person or property of others. The decision of the department shall be final.

~~(8) BANDED OR MARKED RAPTORS~~ (10) Banded or Marked Raptors. If a licensee captures a raptor that has a band, research marker, or transmitter attached to it, the licensee shall promptly report the band number and all other relevant information to the Federal Bird Banding Laboratory at 1-800-327-2263.

(A) If the raptor has a transmitter attached to it, the licensee may possess the raptor for up to 30 calendar days, during which time the licensee shall make a reasonable attempt to contact the researcher owner of the transmitter. If the researcher owner wants to replace the transmitter or its batteries, or have the transmitter removed and the bird released, the researcher or his or her owner or the owner's designee may make such change or allow the licensee to do so before the raptor is released. Temporary possession of the raptor will not count against the licensee's possession limit for falconry raptors. If the researcher owner cannot be contacted or does not want the transmitter to remain on the raptor, the licensee may keep the raptor if it was lawfully captured.

(B) If the raptor belongs to a falconer, subsection ~~(h)~~ (10) (h) (12) shall apply.

~~(9) INJURY DUE TO TRAPPING~~ (11) Injury Due to Trapping. If a raptor is injured due to trapping, the raptor may be put on the licensee's falconry license and it will count as part of the possession limit. If the licensee adds the raptor on the falconry license, he/she the licensee shall report the capture to the department's License and Revenue Branch online reporting system within 10 calendar days after capture, and shall have the raptor immediately treated by a veterinarian or a permitted California wildlife rehabilitator. Alternately, the injured raptor may be immediately given directly to a veterinarian or a permitted California wildlife rehabilitator. In either case, the licensee is responsible for the costs of care and rehabilitation of the raptor.

~~(10) UNINTENTIONAL CAPTURE~~ (12) Unintentional Capture. A licensee shall immediately release any bird unintentionally captured that he/she the licensee is not authorized to possess.

~~(11) PUBLIC AND PRIVATE LANDS~~ (13) Public and Private Lands. A licensee is not authorized to capture raptors or practice falconry on public lands where it is prohibited, on private property without written permission from the landowner or tenant, or on tribal government lands without written permission. The licensee shall carry the original signed written permission while practicing falconry.

~~(h) POSSESSION, TRANSFER, AND DISPOSITION OF RAPTORS~~ Possession, Transfer, and Disposition of Raptors.

~~(1) PERMANENT TRANSFER OF RAPTOR~~ Permanent Transfer of Raptor. A licensee may acquire a raptor through a transfer and shall report the transfer by entering the required information on Form 3-186A in the USFWS's electronic the department's online reporting system within 10 calendar days of the transfer. The number of raptors acquired through a transfer is not restricted, as long as the licensee abides by the requirements of his/her the licensee's class, and does not exceed his/her the licensee's possession limit.

(A) If a licensee transfers a raptor removed from the wild to another licensee in the same year in which it is captured, the raptor will count as one of the raptors the licensee is allowed to capture from the wild that year. It will not count as a capture by the recipient.

(B) A surviving spouse, executor, administrator, or other legal representative of a deceased licensee may transfer any bird held by the licensee to another authorized licensee within 90 calendar days of the death of the licensee. After 90 calendar days, disposition of a raptor held under the license is shall be at the discretion of the department.

~~(2) TEMPORARY TRANSFER OR CARE OF RAPTOR~~ Temporary Transfer or Care of Raptor. Any licensee who temporarily transfers possession of his/her the licensee's raptor to another licensee, or allows an unlicensed person to temporarily care for a raptor, shall provide written notification of such transfer to the department's License and Revenue Branch within 10 calendar days after the bird is transferred. The notification shall include contact information including name, address, phone number, and email address of the temporary caregiver.

(A) Temporary possession of a raptor by a licensee shall not exceed 120 consecutive calendar days. Temporary possession may exceed 120 calendar days only if a request is made to the department's License and Revenue Branch and written authorization is given. Temporary care of a raptor by an unlicensed person shall not exceed a 45 consecutive calendar day period 45 calendar days. A raptor cared for by an unlicensed person shall remain housed at the licensee's facility. The unlicensed person is not authorized to fly the raptor. The licensed person A licensed falconer in temporary possession of a raptor may fly the raptor if he/she the falconer possesses the appropriate level-class license.

~~(3) POSSESSION OF RAPTORS FROM REHABILITATION FACILITIES.~~ A licensee may possess a raptor of any age that he/she is allowed to possess acquired from a permitted wildlife rehabilitation facility. Transfer of a nonreleasable wild raptor from a permitted California wildlife rehabilitation facility is at the discretion of the rehabilitator and will count as one of the raptors a licensee is allowed to capture from the wild during the regulatory year. A licensee acquiring a raptor from a permitted California wildlife rehabilitation facility shall report the transfer by entering the required information on Form 3-186A in the USFWS's electronic reporting system within 10 calendar days of the transfer.

~~(4) ASSISTING IN RAPTOR REHABILITATION~~ (3) Assisting In Raptor Rehabilitation. A General or Master falconer may assist a permitted California wildlife rehabilitator to condition a raptor for its release back into the wild. A rehabilitation raptor possessed in the care of the licensee for this purpose shall not be added to the licensee's falconry license, but shall remain under the permit of the rehabilitator.

(A) The rehabilitator shall provide the licensee with a letter of temporary transfer that identifies the raptor and explains that the falconer is assisting in its rehabilitation. The terms of the temporary transfer are at the discretion of the rehabilitator to assure the necessary care of the raptor. The licensee shall have in possession the letter or legible copies ~~possession while flying the raptor for rehabilitation.~~ while assisting in the rehabilitation of the raptor.

(B) The licensee shall return any such raptor that cannot be released to the wild to the rehabilitator within 180 calendar days unless ~~the rehabilitator transfers the raptor to the licensee otherwise authorized by the department's License and Revenue Branch.~~ The department's Wildlife Branch will make the possession determination.

~~(5) IMPORTATION OF RAPTORS BY NONRESIDENTS OR NON-U.S. CITIZEN~~

~~(4) Importation of Raptors by Nonresidents or Non-U.S. Citizen.~~ A nonresident or non-U.S. citizen may temporarily import lawfully possessed raptors into California for up to 120 calendar days. The department's License and Revenue Branch shall be notified within 10 calendar days prior to importing the raptor. A nonresident or non-U.S. citizen shall submit to the department's License and Revenue Branch official written authority to export raptors from the originating state or country, along with a health certificate for the raptor, prior to importing a raptor. A non-U.S. citizen may import ~~his/her a~~ a falconry raptor that ~~he/she the licensee~~ the licensee possesses legally, provided that importation of that species into the United States is not prohibited, and ~~he/she the licensee~~ the licensee has met all permitting requirements of ~~his/her the licensee's~~ the licensee's country of residence. Import of raptors, including exotic raptors, may be subject to other state and federal laws and may require additional federal permits.

~~(6) RELEASE OF RAPTORS~~ (5) Release of Raptors. A licensee may release a native, wild caught raptor to the wild in California only to a location near the site that raptor was originally captured, and in appropriate habitat for that species of raptor. If the licensee cannot access the site of original capture, then licensee shall release ~~in it~~ it in appropriate habitat for that species of raptor.

(A) Prior to release, the licensee shall ensure the immediate area around the release site is free from other raptors.

(B) The licensee shall remove any falconry band on the raptor being released; however seamless metal bands shall remain attached.

(C) A licensee may not intentionally and permanently, release a non-native raptor, hybrid, or native captive-bred raptor to the wild in California, ~~unless authorized by the department.~~

(D) A licensee shall not release any barred owl to the wild in California. A licensee shall contact the department's License and Revenue Branch to determine disposition of a barred owl in possession. The department's Wildlife Branch will determine disposition.

~~(7) HACKING~~ (6) Hacking. A wild raptor may be hacked for conditioning or as a method for release back into the wild. Any hybrid, captive-bred, or exotic raptor a licensee has in possession may be hacked for conditioning, and shall have two attached functioning radio transmitters during hacking except native captive bred raptors shall have a minimum of one functioning transmitter. A licensee may not hack any raptor near a known nesting area of a state or federally threatened or endangered, or fully protected animal species or in any other location where a raptor may take or harm a state or

federally listed threatened or endangered, or fully protected animal species. Only a General or Master falconer may hawk falconry raptors.

~~(8) DEATH, ESCAPE OR THEFT~~ (7) Death, Escape or Theft. A licensee whose raptor dies, escapes, or is stolen, shall report the loss of the raptor by entering the required information on Form 3-186A in the USFWS's electronic the department's online reporting system within 10 calendar days of the loss. A licensee may attempt to recover a raptor lost to the wild for up to 30 calendar days before reporting the loss. The licensee shall also report a theft of a raptor to an appropriate local law enforcement agency within 10 calendar days of the loss.

~~(9) DISPOSITION OF RAPTOR CARCASS~~ (8) Disposition of Raptor Carcass. If a raptor dies and was banded or had an implanted microchip, the band or microchip shall be left in place. If a licensee keeps the carcass or parts thereof, ~~he/she the licensee~~ shall retain all records of the raptor. A licensee must send the entire body of a golden eagle carcass held for falconry, including all feathers, talons, and other parts, to the National Eagle Repository. Within 10 calendar days the carcass of any other raptor species shall be either:

(A) Delivered to the department. A carcass may only be delivered to the department if the carcass is frozen and if the licensee obtains permission from the department prior to delivery; or if the licensee obtains authorization from the department's License and Revenue Branch prior to delivery. The department's Wildlife Branch will make the determination where the carcass will go. A carcass may only be delivered to the department if the carcass is frozen; or

(B) Donated to any person authorized to possess the raptor or parts thereof; or

(C) Kept by the licensee for use in imping; or

~~(D) Delivered to a taxidermist for mounting and possession by the falconer; or~~

~~(E) (D) Burned, buried, or otherwise destroyed; or~~

(E) Delivered to a taxidermist for mounting and possession by the licensed falconer only.

1. Within 30 days of the expiration of a license, the licensee shall return the mounted raptor to the department.

2. Within 30 days of the death of the licensee, the estate shall return the mounted raptor to the department.

3. In either event, the licensee or the estate shall contact the department's License and Revenue Branch. The department's Wildlife Branch will determine the disposition of the mounted raptor.

~~(10) RECAPTURE~~ (9) Recapture. A licensee may recapture a raptor wearing falconry equipment or a captive-bred or exotic raptor at any time whether or not the licensee is authorized to possess the species. A recaptured raptor will not count against the possession limit of the licensee, nor will its capture from the wild count against the licensee's limit on number of raptors captured from the wild. The licensee shall report recaptured raptors ~~to the department's License and Revenue Branch by submitting a complete Resident Falconer Raptor Capture, Recapture and Release Report and by~~ entering the required information on Form 3-186A in the USFWS's electronic to the department's online reporting system within five calendar days.

(A) A recaptured falconry raptor shall be returned to the person who lawfully possessed it. If that person cannot possess the raptor or does not wish to possess it, the licensee

who recaptured the raptor may keep it if that species is allowed under his/her the licensee's existing license. If kept, the raptor will count towards the licensee's possession limit.

1. A licensee who retains a recaptured raptor shall report the acquisition to the department's License and Revenue Branch by submitting a complete Resident Falconer Raptor Capture, Recapture and Release Report and by entering the required information on Form 3-186A in the USFWS's electronic online reporting system within five calendar days.

2. If neither party wishes to keep the raptor, disposition of the raptor will be at the discretion of the department. The licensee in possession shall contact the department's License and Revenue Branch. The department's Wildlife Branch will determine the disposition of the recaptured raptor.

~~(11) USE OF FEATHERS~~ (10) Use of Feathers. A licensee may possess feathers of each species of raptor authorized to be possessed for as long as the licensee has a valid falconry license. For eagle feathers, a licensee must follow federal standards as noted in Title 50, CFR, Section 21.29 50 CFR 21. A licensee may receive raptor feathers from another person in the United States as long as that person is authorized to possess the feathers. Feathers from a falconry raptor may be donated to any person with a valid permit to possess them, or to anyone exempt from a permit requirement for feather possession. Any feathers of falconry raptors possessed by a falconer whose license has expired or been suspended or revoked shall be donated to any person exempt from the permit requirement or authorized by permit to acquire and possess the feathers within 30 calendar days of the license expiration, suspension or revocation. If the feathers are not donated, they shall be burned, buried, or otherwise destroyed.

~~(12) PURCHASE, BUY, SELL, TRADE, OR BARTER~~ (11) Purchase, Buy, Sell, Trade, or Barter. No person may shall purchase, buy, sell, trade or barter wild raptors or any parts thereof including but not limited to feathers. A licensee may purchase, buy, sell, trade or barter captive-bred, hybrid or exotic raptors marked with seamless metal bands to other licensed falconers persons or entities who are authorized to possess them.

~~(13) USE OF HYBRID, NON-NATIVE, AND EXOTIC RAPTORS~~ (12) Use of Hybrid, Non-native, and Exotic Raptors. When flown free, hybrid, non-native, or exotic raptors shall have attached at least two functioning radio transmitters to allow the raptor to be located.

~~(14) OTHER USES OF FALCONRY RAPTORS~~ (13) Other Uses of Falconry Raptors. A licensee may use falconry raptors for education, exhibiting, propagation, or abatement. A licensee may transfer a wild-caught raptor to a raptor propagation permit, but the raptor shall have been used in falconry for at least two years, or at least one year for a sharp-shinned hawk, merlin, Cooper's hawk or American kestrel. A wild caught raptor may be transferred to another permit type other than falconry only if it has been injured and can no longer be used in falconry. In this case, the licensee shall provide a copy of a certification from a veterinarian to the department's License and Revenue Branch stating that the raptor is not useable in falconry.

~~(A) EDUCATION AND EXHIBITING~~ Education and Exhibiting. A licensee may use raptors in his or her possession for training purposes, education, field meets, and media (filming, photography, advertisements, etc.), as noted in Title 50, CFR, Section 21.29 50 CFR 21, if the licensee possesses the appropriate valid federal permits, as long as the

raptor is primarily used for falconry and the activity is related to the practice of falconry or biology, ecology or conservation of raptors and other migratory birds. Any fees charged, compensation, or pay received during the use of falconry raptors for these purposes may not exceed the amount required to recover costs. An Apprentice falconer may use his/her the licensee's falconry raptor for education purposes only under the supervision of a General or Master falconer.

~~(B) PROPAGATION~~ Propagation. A licensee may conduct propagation activities with raptors possessed under a falconry permit if the licensee possesses a valid federal Raptor Propagation Permit and the person overseeing propagation has any other necessary state and federal authorization or permits. The raptor shall be transferred from a falconry license to a federal Raptor Propagation Permit if it is used in captive propagation for eight months or more in a regulatory license year. The transfer shall be reported by entering the required information on Form 3-186A in the USFWS's ~~and by entering the required information on Form 3-186A in the USFWS's electronic~~ submitting a complete Resident Falconer Raptor Capture, Recapture and Release Report to the department's online the department's online reporting system. Transfer of a raptor from a falconry license to a federal Raptor Propagation Permit is not required if the raptor is used for propagation purposes fewer than eight months in a regulatory license year.

~~(C) ABATEMENT~~ Abatement. A Master falconer may conduct abatement activities with raptors possessed under a falconry license and receive payment if the licensee possesses a valid federal Special Purpose Abatement Permit. A General falconer may conduct abatement activities only as a sub-permittee of the holder of a valid federal Special Purpose Abatement Permit.

~~(i) BANDING AND TAGGING~~ Banding and Tagging.

(1) A goshawk, peregrine, gyrfalcon or Harris's hawk captured from the wild or acquired from another licensee ~~or a permitted California wildlife rehabilitator~~ shall be banded with a permanent, nonreusable, numbered USFWS leg band if the raptor is not already banded. ~~Captive bred raptors that are listed under the MBTA shall be banded with seamless metal bands. A peregrine, gyrfalcon or Harris's hawk legally acquired from another state, or from another licensee, shall be banded with a permanent, nonreusable, numbered USFWS leg band if the raptor is not already banded.~~

(A) A licensee shall obtain a permanent, nonreusable, numbered USFWS leg band from the department's License and Revenue Branch ~~or regional office prior to capturing a raptor from the wild. The License and Revenue Branch shall report banding data to the USFWS.~~

(B) A licensee may purchase and implant an ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip in addition to the band. The licensee shall report the band number ~~and or the microchip information on Form 3-186A in the USFWS's electronic reporting system.~~ to the department's online reporting system when reporting acquisition of the bird.

~~(2) Lost or Removed Bands. A band may be intentionally removed from a raptor only by a department employee or a person authorized by the department's License and Revenue Branch or regional office. A licensee shall report the loss or removal of any band to the department's License and Revenue Branch and enter the required information on Form 3-186A in the USFWS's electronic reporting system within five calendar days of the loss or removal.~~

(2) Captive bred raptors that are listed under the MBTA shall be banded with seamless metal bands.

~~(3) Rebanding. A licensee shall reband a raptor if the original band is lost or removed. The licensee shall enter the required information on Form 3-186A in the USFWS's electronic reporting system within 10 calendar days of rebanding.~~

(3) If a band is lost or must be removed from a raptor in a licensee's possession, the licensee shall report the loss of the band to the department's online reporting system within five (5) days, and the licensee shall request a replacement permanent, nonreusable, numbered USFWS leg band from the department's License and Revenue Branch.

(4) After receiving a replacement band from the department's License and Revenue Branch, the licensee shall reband a raptor if the original band is lost or removed. The License and Revenue Branch shall report rebanding data to the USFWS.

~~(4) Prohibition on Defacing Band. (5) The alteration, counterfeiting or defacing of a band is prohibited except that licensees may remove the rear tab or may smooth any imperfect surface provided the integrity of the band and numbering are not affected.~~

~~(5) Health Considerations. (6) The department may approve an exemption from the banding requirement if a licensee provides documentation that health or injury problems to a raptor are caused by a band. If an exemption is approved, the licensee shall keep the written exemption and shall carry a copy when transporting or flying the raptor. If a wild Northern goshawk is exempted from the banding requirement, an ISO-compliant microchip supplied by the USFWS shall be used instead.~~

(j) FACILITIES, EQUIPMENT, AND INSPECTIONS Facilities, Equipment, and Inspections.

(1) HOUSING STANDARDS AND SPECIFICATIONS Housing Standards and Specifications. Raptor housing facilities shall meet the standards in ~~Title 50, CFR, Section 21.29(d)~~ 50 CFR 21 at all times. Raptor housing facilities shall be inspected and certified by the department prior to issuance of a falconry license. Thereafter, a licensee shall maintain approved permanent facilities for housing raptors.

(A) Raptor housing facilities shall protect raptors housed in them from predators, the environment, domestic animals, and escape, and shall provide a healthy, clean, and safe environment.

(B) Indoor ("mews") or outdoor ("weathering area") raptor facilities may be used to house raptors.

~~(C) Falconry raptors may be kept outside in the open at any location, only if they are in the immediate when in the presence of a licensed falconer and may be temporarily under watch by a person 12 years or older designated by the licensee.~~

(D) Permanent falconry facilities may be either on property owned by a licensee, on property owned by another person where a licensee resides, or elsewhere with property owner approval.

(E) A licensee shall report to the department's License and Revenue Branch, in writing within five calendar days if the licensee moves his/her the licensee's permanent falconry facilities to another location by submitting a completed Raptor Facilities and Falconry Equipment Inspection Report, as specified in Section 703, and the inspection fee. The department will conduct a facility inspection, as specified in Section 703, and the licensee shall pay the inspection fees.

(2) ~~EQUIPMENT~~ Equipment. A licensee shall have jesses or other materials and equipment to make them, leash, swivel, bath container, and appropriate scales or balances for weighing raptors ~~he/she the licensee~~ possess.

(3) ~~INSPECTIONS~~ Inspections. Inspections of indoor or outdoor facilities, equipment, and raptors shall be conducted by the department. Inspections are required for a new license applicant, applicants renewing a lapsed license which has been expired more than 5 years, and licensees that move facility housing to a new address, and these persons. Applicants and licensees shall initiate the inspection by submitting a complete Raptor Facilities and Falconry Equipment Inspection Report and fees, as specified in Section 703. Equipment and facilities that meet the federal standards shall be certified by the department using the Raptor Facilities and Falconry Equipment Inspection Report. Equipment and facilities that do not meet the minimum standards and specifications shall not be certified by the department.

(A) The department may conduct unannounced visits to inspect facilities, equipment, or raptors possessed by the licensee, and may enter the ~~premises~~ facilities of any ~~licensed falconer~~ licensee when the licensee is present during a reasonable time of the day and on any day of the week. ~~The department will make a reasonable attempt to contact the licensee prior to conducting the inspection.~~ The department may also inspect, audit, or copy any permit, license, book, or other record required to be kept by the licensee under these regulations at any time. The department may deny the issuance of, or immediately suspend, the license of a licensee who refuses to be available to participate in a facility inspection or who refuses to allow inspection of a facility, license, book, or other record required to be kept by the licensee. A refusal to allow inspection may be inferred if, after reasonable attempts by the department, the licensee is unavailable for inspection. The department may reinstate a license suspended pursuant to this subdivision if the licensee allows the department to inspect the facility, license, book, or other record, and no violations of these regulations or any license conditions are observed during that inspection.

(B) If a licensee's facilities are not on property owned by the licensee, ~~he/she the licensee~~ shall submit to the department's License and Revenue Branch a signed and dated statement with original signature from the property owner indicating the property owner agrees that the falconry facilities and raptors may be inspected by the department without advance notice.

Note: Authority: Fish and Game Code Sections: 200, 202, 203, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1050, 1054, 1530, 1583, 1802, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150, 10500. Reference: Fish and Game Code Sections: 395, 396, 713, 1050, 3007, 3031, 3503, 3503.5, 3511, 3513, 3801.6. Title 50, Code of Federal Regulations, Parts 21.29 and 21.30, and California Penal Code Section 597.



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## Fish and Game Commission



Wildlife Heritage and Conservation  
Since 1870

November 1, 2016

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Findings regarding Livermore tarplant (*Deinandra bacigalupii*) which will be published in the California Regulatory Notice Register on November 4, 2016.

Sincerely,

Sheri Tiemann  
Associate Governmental Program Analyst

Attachment

BOARD OF SUPERVISORS  
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## NOTICE OF FINDINGS

### Livermore tarplant

#### (*Deinandra bacigalupii*)

**NOTICE IS HEREBY GIVEN** that the California Fish and Game Commission (Commission), at its meeting in Folsom, California on August 25, 2016, made a finding pursuant to Fish and Game Code Section 2075.5, that the petitioned action to add the Livermore tarplant (*Deinandra bacigalupii*) to the list of endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) is warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i).)

**NOTICE IS ALSO GIVEN** that, at its October 20, 2016, meeting in Eureka, California, the Commission adopted the following findings outlining the reasons for its listing decision.

### I. Background and Procedural History

#### Petition History

On August 26, 2014, the Commission received the "A Petition to the State of California Fish and Game Commission" to list the species identified as the Livermore tarplant (*Deinandra bacigalupii*) as an endangered species (Petition). The Petition was submitted by Heath Bartosh (Petitioner).

Commission staff transmitted the Petition to the Department of Fish and Wildlife (Department) pursuant to Fish and Game Code Section 2073 on August 28, 2014, and the Commission published formal notice of receipt of the Petition on September 12, 2014 (Cal. Reg. Notice Register 2014, No. 37-Z, p. 1627). On October 8, 2014, Commission staff provided a copy of the Petition to the Commission pursuant to Title 14, California Code of Regulations, Section 670.1. On November 24, 2014, the Department requested a 30-day extension pursuant to Fish and Game Code Section 2073.5 to allow the Department to complete its analysis. After evaluating the Petition and other relevant information the Department possessed or received, the Department determined that based on the information in the Petition, there was sufficient scientific information to indicate that the petitioned action may be warranted, and recommended the Commission accept the Petition. On April 9, 2015, the Commission voted to accept the Petition and initiate a review of the species' status in California. Upon publication of the Commission's notice of determination, the Livermore tarplant was designated a candidate species on April 24, 2015 (Cal. Reg. Notice Register 2015, No. 17-Z, p. 656).

Following the Commission's designation of the Livermore tarplant as a candidate species, the Department notified affected and interested parties and solicited data and comments on the petitioned action pursuant to Fish and Game Code Section 2074.4. (see also Cal. Code Regs., tit. 14, § 670.1(f)(2).) Subsequently, the Department reviewed the species' status. On April 11, 2016, the Department Director delivered a report on the status review to the Commission

pursuant to Fish and Game Code Section 2074.6, including a recommendation that, based upon the best scientific information available to the Department, the petitioned action is warranted.

On August 25, 2016, at its meeting in Folsom, California, the Commission took up consideration of the Petition and received public testimony on the matter. The Commission voted to add the Livermore tarplant to the list of threatened species. The Commission directed its staff, in coordination with the Department, to prepare findings of fact consistent with the Commission's determination and to present those findings for consideration and ratification at the Commission's October 20, 2016, meeting in Eureka, California.

### **Species Description**

Livermore tarplant is an herbaceous plant of the sunflower family (*Asteraceae*) that grows to a height of 3.9 to 15.7 inches (10 to 40 centimeters). The Livermore tarplant was described as a new species in 1999. The leaves and parts of the stems, flowers, and flower heads of Livermore tarplant have minutely-stalked yellowish or clear glands that are sticky and give the plant a strong odor.

There are four known occurrences of Livermore tarplant, all restricted to the eastern portion of the Livermore Valley, within the City of Livermore and unincorporated Alameda County, California. Livermore tarplant grows in poorly-drained, seasonally-dry, alkaline meadows in the vicinity of barren alkali scalds, alkali vernal pools and playa-like pools.

### **Federal Status**

The Livermore tarplant is not protected pursuant to the federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.).

## **II. STATUTORY AND LEGAL FRAMEWORK**

The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.) The Commission has prepared these findings as part of its final action under CESA regarding the Petition to designate Livermore tarplant as an endangered species under CESA. As set forth above, the Commission's determination that listing Livermore tarplant is warranted marks the end of formal administrative proceedings under CESA. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.)

The CESA listing process for Livermore tarplant began in the present case with the Petitioner's submittal of the Petition to the Commission on August 26, 2014 (Cal. Reg. Notice Register 2014, No. 37-Z, p. 1627). Pursuant to Fish and Game Code Section 2073, on August 28, 2014, the Commission transmitted the petition to the Department for review pursuant to Fish and Game Code Section 2073.5. The regulatory process that ensued is described in some detail in the preceding section above, along with related references to the Fish and Game Code and

controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4<sup>th</sup> 105, 114-116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541-1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111-1116.

The "is warranted" determination at issue here for Livermore tarplant stems from Commission obligations established by Fish and Game Code Section 2075.5(e). Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here, with respect to Livermore tarplant, the Commission made the finding under Section 2075.5(e)(2) that the petitioned action is warranted.

The Commission was guided in making these determinations by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease." (Fish & G. Code, § 2062.) Similarly, the Fish and Game Code defines a threatened species under CESA as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter." (*Id.*, § 2067.)

The Commission also considered Title 14, Section 670.1, subdivision (i)(1)(A), of the California Code of Regulations in making its determination regarding Livermore tarplant. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species' continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Fish and Game Code Section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & G. Code, § 2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, "[l]aws providing for the conservation of natural resources' such as the CESA 'are of great remedial and public importance and thus should be construed liberally.'" (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal. App.4th at pp. 1545-1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., Id., §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

### **III. Factual and Scientific Bases for the Commission's Final Determination**

The factual and scientific bases for the Commission's determination that designating the Livermore tarplant as an endangered species under CESA is warranted are set forth in detail in the Commission's record of proceedings. The evidence in the administrative record in support of the Commission's determination includes, but is not limited to, the Petition, the Department's Petition Evaluation Report, the Department's status review, and other evidence included in the Commission's administrative record as it exists up to and including the Commission meeting in Folsom, California on August 25, 2016. The administrative record also includes these findings.

The Commission determines that the continued existence of Livermore tarplant in the State of California is in serious danger or threatened by one or a combination of the following factors as required by the California Code of Regulations, Title 14, Section 670.1, subdivision (i)(1)(A):

1. Present or threatened modification or destruction of its habitat;
2. Competition; or
3. Other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission's record constitutes the best scientific information available and establishes that designating the Livermore tarplant as an endangered species under CESA is warranted.

The items highlighted here and detailed in the following section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for Livermore tarplant. Similarly, the issues addressed in these findings represent some, but not all of the evidence, issues, and considerations affecting the Commission's final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission, which record is incorporated herein by reference.

All populations of Livermore tarplant occur within the immediate vicinity of urban development. Livermore tarplant is threatened, both directly and indirectly, by recent and ongoing development and changes in land use, impacts from invasive species, recreation activities, and herbicide use. Ground-disturbing impacts from grazing and impacts from thatch accumulation in areas that are not grazed are also potential threats to Livermore tarplant. It is unclear how climate change will affect Livermore tarplant. Livermore tarplant is also vulnerable to extinction due to the small number of Livermore tarplant populations and the relatively small sizes of those populations. Because of the rarity of Livermore tarplant, the loss of all or a significant portion of any Livermore tarplant population would represent the loss of a significant portion of Livermore tarplant's total range.

### **Threats**

#### **Present or Threatened Modification or Destruction of Habitat**

The habitats in the Livermore Valley have been impacted by a history of modification and destruction from development, grazing, and other land use. Evaluation of soil maps and aerial imagery show that these activities have almost certainly resulted in the loss of Livermore tarplant habitat. Current land use practices, zoning, and designations have led to recent and severe habitat modification and destruction that is likely to lead to the extirpation of a significant portion of Livermore tarplant's range, and the modification and destruction of habitat is likely to continue into the future. In addition, recreation activities within and in the vicinity of Livermore tarplant populations have resulted in habitat degradation that is evident on the ground and visible from aerial imagery. The modification and destruction of habitat is a significant threat to the continued existence of Livermore tarplant.

### **Competition**

Invasive plant species have been documented to pose serious threats to biodiversity around the world, and are a particularly pervasive problem in Mediterranean-type habitats like those in California. Invasive thatch-forming grasses, and other invasive plants such as perennial pepperweed, occur within and in close proximity to all Livermore tarplant populations. Invasive plant species are a significant threat to the continued existence of Livermore tarplant.

### **Other Natural Occurrences or Human-related Activities**

The climate of California is certain to change due to warming of the global climate system; however, it is unclear how such changes will affect Livermore tarplant. Livermore tarplant has a narrow distribution and few populations, with three of the four known populations occupying relatively small areas. Livermore tarplant's rarity and extremely limited distribution, and its occurrence only in and near developed areas, make the species very vulnerable to stochastic (chance) events such as droughts, wildfires, and accidents, and to all other threats. Therefore, the loss of all or a significant portion of any Livermore tarplant population would represent the loss of a significant portion of Livermore tarplant's total range. Livermore tarplant is also threatened by herbicide application and other right-of-way maintenance activities.

### **IV. FINAL DETERMINATION BY THE COMMISSION**

The Commission has weighed and evaluated the information for and against designating Livermore tarplant as an endangered species under CESA. This information includes scientific and other general evidence in the Petition, the Department's Petition Evaluation Report, the Department's 2016 peer-reviewed Status Review, the Department's related recommendations, and other evidence included in the Commission's record of proceedings.

Based upon the evidence in the record the Commission has determined that the best scientific information available indicates that the continued existence of Livermore tarplant is in serious danger or threatened by present or threatened modifications or destruction of the species' habitat, predation, competition, disease, or other natural occurrences or human-related activities, where such factors are considered individually or in combination. (See generally Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A); Fish & G. Code, §§ 2062, 2067.) The Commission determines that there is sufficient scientific information to indicate that designating Livermore tarplant as an endangered species under CESA is warranted at this time and that with adoption and publication of these findings Livermore tarplant for purposes of its legal status under CESA and further proceedings under the California Administrative Procedure Act, shall be listed as endangered.

**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
**Russell E. Burns, Member**  
Napa  
**Peter S. Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
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## Fish and Game Commission



Wildlife Heritage and Conservation  
Since 1870

November 1, 2016

BOARD OF SUPERVISORS  
2016 NOV -7 A 10:06

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Findings regarding the Townsend's big-eared bat (*Corynorhinus townsendii*) which will be published in the California Regulatory Notice Register on November 4, 2016.

Sincerely,

A handwritten signature in black ink that reads "Sheri Tiemann". The signature is fluid and cursive.

Sheri Tiemann  
Associate Governmental Program Analyst

Attachment



**NOTICE OF FINDINGS**  
**Townsend's Big-Eared Bat**  
**(*Corynorhinus townsendii*)**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), at its August 25, 2016 meeting in Folsom, California, made a finding pursuant to Fish and Game Code Section 2075.5, that the petitioned action to add the Townsend's big-eared bat (*Corynorhinus townsendii*) to the list of threatened or endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) is not warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).)

NOTICE IS ALSO GIVEN that, at its October 20, 2016 meeting in Eureka, California, the Commission adopted the following findings outlining the reasons for its rejection of the petition.

**I. BACKGROUND AND PROCEDURAL HISTORY**

**Petition History**

The Center for Biological Diversity (Petitioner) submitted a petition (Petition) to the Commission on November 1, 2012 to list the Townsend's big-eared bat (*Corynorhinus townsendii*) as threatened or endangered pursuant to the California Endangered Species Act (CESA). The Commission referred the Petition for evaluation to the California Department of Fish and Wildlife (Department) on November 9, 2012 pursuant to Fish and Game Code Section 2073, and published formal notice of receipt of the Petition on November 30, 2012 (Cal. Reg. Notice Register 2012, No. 48-Z, p. 1747).

The Department evaluated the Petition, using the information in that document and other relevant information available at that time, and found that the scientific information presented in the Petition was sufficient to indicate that the petitioned action may be warranted. On April 25, 2013 the Department submitted to the Commission its "Evaluation of the Petition from Center for Biological Diversity to List Townsend's Big-Eared Bat (*Corynorhinus townsendii*) as Threatened or Endangered Under the California Endangered Species Act" (Petition Evaluation). The Department recommended that the Commission accept the Petition pursuant to Fish and Game Code Section 2073.

On June 26, 2013, at its meeting in Sacramento, California, the Commission considered the Petition, the Department's Petition Evaluation, and public comments, and determined that there was sufficient information in the Petition Evaluation to indicate

### **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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that the petitioned action maybe warranted, accepted for consideration the Petition, and designated the Townsend's big-eared bat as a candidate species under CESA. (Cal. Reg. Notice Register 2013, No. 52-Z, p. 2092.)

The Department notified affecting parties by issuing a press release, posting notice on the Department's website, and sending targeted letters to stakeholder groups. (Fish & G. Code, § 2074.4.) Consistent with Fish and Game Code Section 2074.6 and its implementing regulations, the Department commenced twelve-month status review of the Townsend's big-eared bat following published notice of its designation as a candidate species under CESA. As an integral part of that effort, the Department solicited data, comments, and other information from interested members of the public and the scientific and academic communities. The Department mailed notice of the Townsend's big-eared bat's candidacy and a request for information and comments to approximately 150 persons or offices of state and federal agencies, tribes, counties, industry, and non-governmental organizations. The Department received letters or emails from 39 individuals and organizations. Most of these communications provided information on Townsend's big-eared bat occurrences in or near public and private lands. A few, including a letter from the Petitioner, argued in support of listing the species as threatened or endangered.

At its meeting on December 3, 2014 in Van Nuys, California, the Commission granted CDFW a six-month extension to facilitate external peer review. On January 7, 2016, the Department submitted a preliminary draft of its status review for independent scientific peer review by a number of individuals acknowledged to be experts on Townsend's big-eared bat, possessing the knowledge and expertise to critique the scientific validity of the report. (Fish & G. Code, § 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).) On June 15, 2016, the Department submitted its final "Status Review of Townsend's Big-eared Bat (*Corynorhinus townsendii*) in California" to the Commission (Status Review). Based on its Status Review and the best available science, the Department recommended to the Commission that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted. (Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).) Following receipt, the Commission made the Department's Status Review available to the public, inviting further review and input. (Cal. Code Regs., tit. 14, § 670.1, subd. (g).)

On August 25, 2016, at its meeting in Folsom, California, the Commission received public comment, accepted additional information from the Petitioner and the public, and considered final action regarding the Petition to designate Townsend's big-eared bat as a threatened or endangered species under CESA. (Fish & G. Code, § 2075.5; Cal. Code Regs., tit. 14, § 670.1, subd. (i).) After receiving public comment, the Commission

## **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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closed the administrative record of proceedings for the Petition. (Fish & G. Code, § 2075.5, subd. (a).) The Commission considered the Petition, further information submitted by the Petitioner, public comment, the Department's 2013 Petition Evaluation, the Department's 2016 Status Review, and other information included in the Commission's administrative record of proceedings. Following public comment and deliberation, the Commission determined, based on the best available science, that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted. (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).) The Commission directed its staff, in coordination with the Department, to prepare findings of fact consistent with the Commission's determination and to present those findings for consideration and ratification at the Commission's October 20, 2016 meeting in Eureka, California.

### **Species Description**

Townsend's big-eared bat is a medium sized bat (Barbour and Davis 1969, Kunz and Martin 1982). Among western North American bats, Townsend's big-eared bat is unique with its combination of a two-pronged, horseshoe-shaped lump on the muzzle and large, long ears. Townsend's big-eared bat ranges throughout much of the western United States and Canada. In California, its geographic range is generally considered to encompass the entire state, except for the highest elevations of the Sierra Nevada (Dalquest 1947, Pierson and Rainey 1998, Pierson and Fellers 1998, Szewczak et al. 1998). Townsend's big-eared bat is a colonial species. Maternity colonies form between March and June, with the timing varying based on local climate, elevation, and latitude. Colonies typically range from a few dozen to several hundred individuals, although colonies of over 1,000 have been documented. A single pup is born between May and July (Easterla 1973, Pearson et al. 1952, Twente 1955). While adult males are typically solitary during the maternity season, adult females and their pups cluster together in colonial roosts (Pearson et al. 1952). Nursery colonies typically begin to disperse in August about the time the young are weaned and break up altogether in September and October (Pearson et al. 1952, Tipton 1983). Maximum fecundity per adult female is one pup per year.

Once a roost site has been successfully colonized by Townsend's big-eared bat (whether for the warm or hibernation season), it is likely to be used in subsequent years, so long as it remains suitable (Humphrey and Kunz 1976). However, it is not unusual for individuals to move among multiple maternity colonies and even for entire maternity colonies to switch roosts during the course of the season (Fellers and Pierson 2002, Sherwin et al. 2000, 2003). Some roosts are only used for short periods of time or during occasional years. Townsend's big-eared bat's perceived susceptibility to human

### **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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disturbance at roost sites is usually cited as a key behavioral characteristic putting the species at conservation risk (Twente 1955, Barbour and Davis 1969, Humphrey and Kunz 1976). Roost abandonment (sometimes resulting in death of pups) has been documented following human entry into roosts.

Diet of Townsend's big-eared bat has not been examined in detail in California; however, it is likely that as elsewhere they are lepidopteran specialists, feeding primarily on medium-sized moths, supplemented with occasional captures of other insects, including flies, beetles, and aquatic insects. Townsend's big-eared bat, like most mammals, maintains a high body temperature primarily through heat produced by its metabolism. Like many bat species inhabiting temperate regions, Townsend's big-eared bat uses torpor as a physiological and behavioral strategy in winter to deal with diminished food resources and cool or cold ambient temperatures, which make it energetically costly to maintain normal high body temperature. Townsend's big-eared bat hibernation sites are generally caves or mines (Pearson et al. 1952, Barbour and Davis 1969), although animals are occasionally found in buildings (Dalquest 1947). In areas with prolonged periods of non-freezing temperatures, Townsend's big-eared bat tends to form relatively small hibernating aggregations of single to several dozen individuals, and may be active during the winter to take advantage of warm weather and prey availability. Larger aggregations (75-460 individuals) are confined to areas that experience prolonged periods of freezing temperatures (Pierson and Rainey 1998).

Habitat associations for Townsend's big-eared bat in California include the inland deserts (Colorado, Mojave, Great Basin); cool, moist coastal redwood forests; oak woodlands of the Sierra Nevada foothills and coastal mountains; and lower to mid-elevation mixed coniferous-deciduous forests. Townsend's big-eared bat has also been observed hibernating in the bristlecone-limber pine habitat of the White Mountains (Inyo County).

Townsend's big-eared bat prefers open surfaces of caves or cave-like structures, such as mine adits and shafts (Barbour and Davis 1969, Graham 1966, Humphrey and Kunz 1976). It has also been reported in such structures as buildings, bridges, and water diversion tunnels that offer a cave-like environment (Barbour and Davis 1969, Dalquest 1947, Howell 1920, Pierson and Rainey 1998). It has been found in rock crevices and, like a number of bat species, in large hollow trees (Gellman and Zielinski 1996, Fellers and Pierson 2002, Mazurek 2004). Foraging associations include edge habitats along streams and areas adjacent to and within a variety of wooded habitats (Brown et al. 1994, Fellers and Pierson 2002, Pierson et al. 2002). The Department considers any structure, or set of structures, used by Townsend's big-eared bat as a maternity or hibernation roost to be habitat essential for the continued existence of the species. The

## **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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essential characteristics of these suitable roost sites extend to the nearby foraging, commuting, and night-roosting habitat and therefore these adjacent habitats are also considered essential.

### **Regulatory Status**

The two western subspecies of Townsend's big-eared bat are not currently listed as endangered or threatened nor are they candidates for listing under the federal Endangered Species Act (ESA). Two eastern subspecies are listed as Threatened under the ESA.

NatureServe, a non-profit conservation organization whose mission is to provide the scientific basis for effective conservation action through its network of natural heritage programs, ranks Townsend's big-eared bat as a whole and each of the two non-listed subspecies (*C. t. pallescens* and *C. t. townsendii*) as "G3G4/T3T4" throughout their respective geographic ranges. This designation indicates uncertainty regarding conservation status, which may be characterized as either Apparently Secure (G4/T4) or Vulnerable (G3/T3). NatureServe defines "Vulnerable" as "at moderate risk of extinction or elimination due to a restricted range, relatively few populations, recent and widespread declines, or other factors" and "Apparently Secure" as "Uncommon but not rare; some cause for long-term concern due to declines or other factors." (<http://explorer.natureserve.org/granks.htm>).

The current version of the International Union for the Conservation of Nature Red List designates Townsend's big-eared bat as a 'Least Concern' species based on the latest assessment of the species range-wide. The IUCN had previously designated the species in 1996 as 'Vulnerable.' The Least Concern designation is based on "its wide distribution, presumed large population, occurrence in a number of protected areas and because it is unlikely to be declining at nearly the rate required to qualify for listing in a threatened category."

## **II. STATUTORY AND LEGAL FRAMEWORK**

The Commission has prepared these findings as part of its final action under CESA regarding the Petition to designate Townsend's big-eared bat as a threatened or endangered species under CESA. As set forth above, the Commission's determination that listing Townsend's big-eared bat is not warranted marks the end of formal administrative proceedings under CESA. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The Commission, as established by the California Constitution, has exclusive statutory authority under California law to

### NOTICE OF FINDINGS – Townsend's Big-eared Bat

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designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.)

The CESA listing process for Townsend's big-eared bat began in the present case with Petitioner's submittal of its Petition to the Commission in November 2012 (Cal. Reg. Notice Register 2012, No. 48-Z, p. 1747). The regulatory process that ensued is described above in some detail, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114-116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541-1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111-1116.

The "is not warranted" determination at issue here for Townsend's big-eared bat stems from Commission obligations established by Fish and Game Code Section 2075.5(e). Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process: whether the petitioned action is warranted or is not warranted. Here with respect to Townsend's big-eared bat, the Commission made the finding under Section 2075.5(e)(1) that the petitioned action is not warranted.

The Commission was guided in making this determination by various statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease. (Fish & G. Code, § 2062.) Similarly, the Fish and Game Code defines a threatened species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter. (*Id.*, § 2067.)

As established by published appellate case law in California, the term "range" for purposes of CESA means the range of the species within California. (*California Forestry Association v. California Fish and Game Commission*, *supra*, 156 Cal. App.4th at p. 1540, 1549-1551.)

### **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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The Commission was also guided in making its determination regarding Townsend's big-eared bat by Title 14, Section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the continued existence of the species is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Fish and Game Code Section 2070 provides similar guidance. This Section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & G. Code, § 2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Yet, the Commission made its determination regarding Townsend's big-eared bat mindful of this policy direction, acknowledging that "[l]aws providing for the conservation of natural resources' such as the CESA 'are of great remedial and public importance and thus should be construed liberally'" (*California Forestry Association v. California Fish and Game Commission*, *supra*, 156 Cal. App.4th at pp. 1545-1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.).

Finally in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

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**NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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**III. FACTUAL AND SCIENTIFIC BASIS FOR THE COMMISSION'S FINDINGS**

The factual and scientific bases for the Commission's finding that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted are set forth in detail in the Commission's administrative record of proceedings. The evidence in the administrative record in support of the Commission's determination includes, but is not limited to, the Department's 2013 Petition Evaluation and 2016 Status Review, and other information specifically presented to the Commission and otherwise included in the Commission's administrative record as it exists up to and including the Commission meeting in Folsom, California on August 25, 2016. The administrative record also includes these findings.

The Commission finds the substantial evidence highlighted in the preceding paragraph, along with other evidence in the administrative record, supports the Commission's determination that the continued existence of Townsend's big-eared bat in the State of California is not in serious danger of becoming extinct or threatened by on or a combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also finds that the same evidence constitutes sufficient scientific information to establish that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted. The Commission finds in this respect that Townsend's big-eared bat is not in serious danger of becoming extinct throughout all, or a significant portion, of its range in California. Similarly, the Commission finds that Townsend's big-eared bat is not presently threatened and it is unlikely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by CESA.

The following Commission findings highlight in more detail some of the scientific and factual information and other evidence in the administrative record of proceedings that support the Commission's determination that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted:

1. The Petition relied heavily a 1998 report prepared for the Department summarizing surveys of Townsend's big-eared bat maternity colonies and hibernacula throughout much of the species' range in California during the period from 1987 to 1991, and compared those results to the original site reports from the period of 1918 to 1974 (Pierson and Rainey 1998). Based on these surveys,



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**NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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the report inferred that the Townsend's big-eared bat population had declined over the several decades before the study. No statewide study assessing the status of the species has been conducted since, although the Department is currently funding a new statewide survey targeting known and highly-suitable locations for maternity and hibernation roosts, and anticipates that an updated snapshot of the species' distribution will be available in 2017. However, from existing information on a number of maternity and hibernation roosts around California, five of six studies concluded that site specific populations are stable or increasing. Although not a statistically valid estimate of population size or trend statewide, the studies do illustrate how colony sizes and threats vary around the state, as well as how management of roosts can directly affect local assemblages of Townsend's big-eared bat.

2. Loss of suitable roosting site habitat is often considered a limiting factor for western bat populations. (Hayes, 2003). Old-growth conifers, a known roosting site of Townsend's big-eared bat (Pierson and Fellers, 1998; Mazurek, 2004; Humphrey and Kunz, 1976), could be impacted by forestry practices, timber operations, loss of oak woodlands, and conversion of forests into agricultural uses. Mining operations and recreational activities in caves and abandoned mines also pose a risk to roosting sites. However, human activities in the late 1800s such as mining and building construction also create available roost habitat, and it is possible that Townsend's big-eared bat distribution merely shift and redistributed as new roost sites became available (Sherwin et al. 2009).
3. Disturbance to roost sites is a hypothesized threat to Townsend's big-eared bat populations. However, the impact of disturbance is disputed, and it is possible that disturbed roosting colonies may only temporarily abandon those sites (R. Stafford 2014, pers. comm.; Fellers and Halstead 2015). One colony has shown tolerance to disturbance (Freeman 2012). Some studies additionally indicate that colonies may move between multiple roost sites during a maternity season, and more study is needed before concluding that human disturbance is the driving force behind the dynamics of roost use (Sherman et al. 2000, 2003, 2009; Sherwin 2016 pers. comm.). The Department did not find any indication that disturbance of roost sites is a significant threat state-wide.
4. Climate change models evaluating a range of possible future distribution of Townsend's big-eared bat project that the species will fare reasonably well in terms of availability of climatically suitable habitat in California.

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**NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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5. The Department does not consider overexploitation, predation, or competition to be a significant threat to the Townsend's big-eared bat population in California.

**IV. ADDITIONAL CONSIDERATIONS INFORMING THE COMMISSION'S FINAL DETERMINATION**

The Commission's determination that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted is informed by various additional considerations. In general, the Fish and Game Code contemplates a roughly twelve-month long CESA listing process before the Commission, including multiple opportunities for public and Department review and input and peer review (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.). From the initial receipt of the Petition in November 2012 through the Commission's decision on August 25, 2016 that listing is not warranted, the Department and the Commission received numerous comments and other significant public input regarding the status of Townsend's big-eared bat from a biological and scientific standpoint and with respect to the petitioned action under CESA. The Commission, as highlighted below, was informed by and considered all of these issues, among others, in making its final determination that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).).

**V. SCIENTIFIC DETERMINATIONS REGARDING THE STATUS OF THE TOWNSEND'S BIG-EARED BAT**

CESA defines an endangered species as one "which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease." (Fish & G. Code, § 2062.) CESA defines a threatened species as one "that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by [CESA]." (Id., § 2067.)

Pursuant to CESA's implementing regulations, a "species shall be listed as endangered or threatened ... if the Commission determines that its continued existence is in serious danger or is threatened by anyone or any combination of the following factors: (1) present or threatened modification or destruction of its habitat; (2) overexploitation; (3) predation; (4) competition; (5) disease; or (6) other natural occurrences or human-related activities." (Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).)

**Present or Threatened Modification or Destruction of Habitat**

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**NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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- Disturbance, degradation, and loss of suitable roost sites are recognized threats to Townsend's big-eared bat populations. Natural roost sites include large, old trees and caves, in addition to human-made roosts such as old buildings and mines. Forestry practices, timber operations, conversion of forest to agricultural land, mining activities, and recreational exploration of mines and caves are all activities that could potentially cause loss or disturbance of roost sites. However, the impact of disturbance is hypothesized and still needs further study. Overall there is no current indication that loss or disturbance of roost sites is a significant state-wide threat to the species at this time.
- Impacts to foraging habitat could also affect the species. Land management practices that lead to agricultural development, extensive clear-cutting, or residential and urban development reduce available foraging habitat for the species. It is possible that climate change may affect foraging habitat suitability as well. However, there is no indication that current impacts to foraging habitat pose a significant threat at this time.
- Based on the best scientific information available, the Commission finds that the continued existence of the Townsend's big-eared bat is not in serious danger or threatened by present or threatened modification or destruction of habitat.

**Overexploitation**

- Townsend's big-eared bat is a nongame mammal, and the only collection that does occur in California is on a limited basis for bona fide scientific and educational purposes. The Department regulates collection according to Fish and Game Code Sections 1002 *et seq.* For long-lived/low fecundity species such as Townsend's big-eared bat, it is possible that repeated scientific collection may have a population impact. There is also a concern that placing of wing bands for scientific research may have a negative impact on individual bats. To address these concerns, the Department carefully controls the activities of scientific researchers working on Townsend's big-eared bat in California. Given the level of control exerted by the Department, overexploitation for scientific purposes is not considered to be a threat to the continued existence of Townsend's big-eared bat in California.
- Based on the best scientific information available, the Commission finds that the continued existence of the Townsend's big-eared bat population is not in serious danger or threatened by overexploitation.

## **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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### **Predation**

- Individual Townsend's big-eared bat populations may be preyed upon by a variety of native and non-native predators, for example raccoons, bobcats, house cats, skunks, and snakes, and rats. However, Pearson et al. (1952) discounted predation as a limiting factor on Townsend's big-eared bat populations, and the Department does not consider predation a significant threat at this time.
- Based on the best scientific information available, the Commission finds that the continued existence of the Townsends's big-eared bat population is not in serious danger or threatened by predation.

### **Competition**

- There is no evidence indicating that competition for resources (such as prey, water, and cover habitat) with other native or introduced species is a threat to the continued existence of Townsend's big-eared bat in California.
- Based on the best scientific information available, the Commission finds that the continued existence of Townsend's big-eared bat is not in serious danger or threatened by competition.

### **Disease**

- White Nose Syndrome is an important threat to bat species nationwide, and a potential threat to Townsend's big-eared bat in California. Although it White Nose Syndrome was recently detected in Washington state, surveys have yet to detect it in California. Monitoring and research to determine the species' susceptibility to the disease is needed to assess the level of the threat. However, this disease is not currently impacting Townsend's big-eared bat in California. Additionally, there is nothing to suggest that Townsend's big-eared bat populations in California have been subject to recent disease outbreaks.
- Based on the best scientific information available, the Commission finds that the continued existence of the Townsend's big-eared bat is not in serious danger or threatened by disease.

### **Other Natural Events or Human-Related Activities**

- Mines provide important shelter for Townsend's big-eared bats and may be used year round for their roosting needs. Structurally diverse mines may provide both warm roosts for maternity colonies and cool roosts for hibernation (Pierson and Fellers 1998, Pierson and Rainey 1998, Pierson et al. 1991, 1999). Closure of

### **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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mines, environmental contamination, and human disturbances may pose a threat to the species. Permanent mine closure methods have resulted in some cases in the destruction of roosting habitat, and mortality of bats by trapping them within the closed mine. California's Abandoned Mine Lands program is actively engaged in reducing hazards associated with open mines, and works with state, federal, and private land owners to ensure that wildlife-compatible closure methods are implemented. These programs should minimize the negative impacts of mine closures on sensitive species, and the Department considers it unlikely that population-level impacts would occur.

- The extent that pesticide use in California impacts Townsend's big-eared bat populations is unknown, although it is likely at least some individuals are impacted where toxins are concentrated through either absorption through the skin or ingestion of contaminated prey or water. It is unknown to what level current and future pesticide use could pose a threat to Townsend's big-eared bat populations.
- Mineral extraction can result in pools of water contaminated with toxic chemicals that pose a threat to wildlife, including bats. Although toxic leach fields and ponds are a potential threat to Townsend's big-eared bat, the Department believes that regulatory oversight of the mining industry minimize the risks associated with mine toxins to an acceptably low level.
- Climate change modeling using climatic variables to model the current and possible future distribution of Townsend's big-eared bat under four different future climate change projections showed that the species is projected to fare reasonably well in terms of availability of climatically suitable habitat in California. Most of the currently suitable modeled habitat is projected to remain stable, and areas in the north of the state and at higher elevations are project to increase in suitability. The Department does not believe that climate change is a significant threat to the species.
- Based on the best scientific information available, the Commission finds that the continued existence of the Townsend's big-eared bat is not in serious danger or threatened by other natural events or human-related activities.

### **Summary of Key Findings**

Based on the criteria described above, the best scientific information available to the Commission indicates that Townsend's big-eared bat is not currently in serious danger

### **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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of becoming extinct in California within the next few decades, nor in the foreseeable future in the absence of special protection and management under CESA.

The current size of the Townsend's big-eared bat population in California is uncertain. While historic data evaluated in the 1998 report indicated a potential decline in the population, more recent studies show that at specific areas throughout the state, local populations of Townsend's big-eared bat have remained stable or even increased in size.

Disturbance, degradation, and loss of suitable roost sites is a recognized threat to Townsend's big-eared bat populations. However, there is no current indication that loss or disturbance of roost sites is a significant state-wide threat to the species at this time. Additionally, although impacts to foraging habitat could also affect the species, there is no indication that current impacts to foraging habitat pose a significant threat at this time.

The Department evaluated other factors, such as overexploitation, predation, competition, disease, and climate change. Based on the Department's analysis, none of these factors is considered to be a serious threat to the continued existence of the Townsend's big-eared bat population in California.

Based on the best scientific information available, the Department concludes the continued existence of the Townsend's big-eared bat is not in serious danger or threatened. Further, the Department generated the following recommendations to prioritize conservation, research, regulation, and monitoring activities.

#### **Research and Monitoring Needs**

- Complete comprehensive statewide assessment of Townsend's big-eared bat by 2017.
- Implement consistent long-term monitoring at representative Townsend's big-eared bat roost sites in California, including at both maternity and hibernation roosts.
- Design and test human-made structures suitable for use by Townsend's big-eared bat during the maternity and hibernation seasons.
- Create standardized procedures for monitoring Townsend's big-eared bat populations. Ensure all such studies will not adversely impact the subject populations. This should include formal study of the frequency of roost-switching and other movements, both to determine the degree such human study affects movements and to better understand detection probabilities for roost surveys and to develop guidance on the timing and numbers of survey visits needed to determine occupancy or probable absence.

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**NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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- Conduct additional analyses of the possible effects of climate change and drought on Townsend's big-eared bat and determine best approaches to address possible adverse effects.
- Conduct research on the role environmental contaminants play in the health of Townsend's big-eared bat populations
- Develop methods to create basal hollows in suitable large old trees.
- Conduct genetic studies to determine the population genetic structure of Townsend's big-eared bat in California, with special attention to the degree of divergence and isolation of populations on Santa Cruz Island relative to the mainland and between coastal and interior populations.

**Department Administrative Actions**

- If results of current or future statewide Townsend's big-eared bat surveys indicate a decline in the population status is occurring that may lead to endangerment, prepare a staff recommendation to list the species as Threatened or Endangered for consideration by the Commission.
- Working with partners at state and federal agencies, as well as private landowners, ensure that management of Townsend's big-eared bat roost sites is consistent with continued site occupancy at or above existing population levels.
- Attempt to secure new funding and position resources as a priority to establish a full-time permanent bat specialist position within the Nongame Wildlife Program of the Department to address data assimilation and conservation of bats in California, including Townsend's big-eared bat.
- Support research on the design and effectiveness of human-made structures suitable for use by Townsend's big-eared bat during the maternity and hibernation seasons.
- Create interagency and other stakeholder cooperation in, and public support for, conservation efforts for Townsend's big-eared bat. Partner with non-governmental organizations such as Bat Conservation International, The Nature Conservancy, and local NGOs in such efforts.
- Develop greater awareness of Townsend's big-eared bat and other bat conservation and management issues within the Department.
- Direct fiscal and position resources to complete the draft California Bat Conservation Plan.

**Management of Known Roost Sites**

- Prior to changing management of caves, mines, or buildings that could be used by Townsend's big-eared bat or other bat species, such sites should be

### **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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evaluated and/or surveyed during appropriate seasons for their use by Townsend's big-eared bat.

- Existing roosts should be left undisturbed and occupied roosts should only be entered for management or research purposes.
- Bat-friendly gates should be installed at Townsend's big-eared bat roosts where other methods of controlling human entrance are not effective. Special consideration should be given to gate design to minimize risk of injury or unsuitability for Townsend's big-eared bat. Corrugated culvert gates should not be used.
- Abandoned mines suitable for use by Townsend's big-eared bat should not be closed in a manner that prevents bat use, or if they cannot be maintained then adequate mitigation and exclusion should be conducted prior to their closure. If renewed mining will close a mine, mitigation for replacement habitat should be implemented. Mitigation monitoring should be done by the appropriate agency to determine effectiveness.
- Effectiveness monitoring (use of data loggers to passively record bat use and human disturbance) should be implemented at gated roost sites and other roost sites actively managed for bat resources (as through signage, information for visitors, etc.).
- Ensure native vegetation and access to open water and/or riparian habitat within the vicinity of maternity roosts remains suitable for use by Townsend's big-eared bat. Analysis of habitat suitability should be made on a site-specific basis, but start with using the area within a 24-km radius of the roost site.
- Where a Townsend's big-eared bat or other bat roost site has a history of recreational use by humans, implement a management plan to ensure new impacts from human use do not occur. The Kentucky Mine Stamp Mill management plan (Tierney and Freeman 2007) is a good example of such a plan that appears to be successful.

#### **Landscape Management Practices**

- Developed springs and other water sources should be kept available for in-flight drinking.
- If protracted drought poses a threat to Townsend's big-eared bat, develop additional water sources for drinking and foraging in areas where open water and associated insect prey production might limit population size.
- Restore or enhance riparian habitat.
- Implement basal hollow creation projects to increase opportunities for Townsend's big-eared bat to use tree roosts in coastal redwood forests (and



## **NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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possibly in interior forests where large tree species, such as giant sequoia, have the potential to serve as roost sites)

### **CEQA Review of Proposed Projects**

- Ensure direct and cumulative impacts from projects proposed under CEQA and CEQA-equivalent regulatory programs are not likely to result in a substantial reduction in population or range of Townsend's big-eared bat and other bat species.

### **Public Education and Outreach**

- Conduct and cooperate with other agencies on public outreach events about Townsend's big-eared bat and other bat species.
- Disseminate the California Bat Conservation Plan to the public, when complete.
- Encourage citizen participation, as appropriate, in bat monitoring projects.
- Promote bat-friendly exclusions, including seasonally-appropriate timing of exclusions, where it is necessary to remove bats from buildings and other structures.

### **Health and Disease**

- Continue and expand surveillance for WNS by state and federal agencies and researchers.
- Support research on the etiology and epidemiology of WNS on *Corynorhinus* species, including Townsend's big-eared bat.
- Continue and expand, if necessary, decontamination requirements for persons entering hibernacula for Townsend's big-eared bat and other hibernating bat species to minimize the risk of introducing the fungus that causes WNS.
- Work with other state and federal regulatory agencies to prevent the introduction of environmental contaminants that may affect the health of Townsend's big-eared bat and other bats. These may include aerial pesticide application and chemicals used in processing mined minerals.

## **VI. FINAL DETERMINATION BY THE COMMISSION**

The Commission has weighed and evaluated all information and inferences for and against designating Townsend's big-eared bat as a threatened or endangered species under CESA. This information includes scientific and other general evidence in the Petition, the Department's 2013 Petition Evaluation, the Department's 2016 peer-reviewed Status Review, and the Department's related recommendations based on the

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**NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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best available science, written and oral comments received from the public and the scientific community, and other evidence included in the Commission's administrative record of proceedings.

Based on the evidence in the administrative record, the Commission has determined that the best scientific information available indicates that the continued existence of Townsend's big-eared bat in California is not in serious danger or threatened in the foreseeable future by present or threatened modifications or destruction of Townsend's big-eared bat habitat, overexploitation, predation, competition, disease, or other natural occurrences or human-related activities. (See generally Fish & G. Code, §§ 2062, 2067; Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).) The Commission finds, for the same reason, that there is not sufficient scientific information at this time to indicate that the petitioned action is warranted (Fish & G. Code, §§ 2070, 2075.5.). The Commission finds that designating Townsend's big-eared bat as a threatened or endangered species under CESA is not warranted and that, with adoption of these findings, for purposes of its legal status under CESA shall revert to its status prior to the filing of the Petition. (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd., (i)(2).)

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NOTICE OF FINDINGS – Townsend's Big-eared Bat

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**NOTICE OF FINDINGS – Townsend's Big-eared Bat**

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## Fish and Game Commission



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BOARD OF SUPERVISORS  
 2016 NOV 21 A 10:00

November 18, 2016

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending section 265, Title 14, California Code of Regulations, relating to use of dogs in pursuit and take of mammals, which is published in the California Regulatory Notice Register on November 18, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx>.

**Craig Stowers, Environmental Program Manager, Department of Fish and Wildlife, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

  
 Jon D. Snellstrom  
 Associate Governmental Program Analyst

Attachment

**TITLE 14. Fish and Game Commission  
Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections: 200, 202, 203, 3960, 3960.2 and 3960.4 of the Fish and Game Code and to implement, interpret or make specific Sections 3960, 3960.2 and 3960.4 of said Code, proposes to amend Section 265, Title 14, California Code of Regulations, relating to Use of Dogs for Pursuit/Take of Mammals or for Dog Training

**Informative Digest/Policy Statement Overview – Inland Fisheries**

In April 2016, the Fish and Game Commission adopted changes to Section 265, Title 14, California Code of Regulations authorizing the use of GPS collars and treeing switches for dogs aiding a hunter. The Public Interest Coalition filed a petition in Superior Court in Sacramento County (Case No. 34-2016-80002350) seeking a Writ of Mandate invalidating the Fish and Game Commission's action. That petition alleges that the Commission failed to comply with the procedural requirements of CEQA. The Commission has determined that further rulemaking may be necessary to resolve that litigation. The rulemaking and the related CEQA analysis will also help to further inform the Commission about the issues related to regulating the use of dogs as an aid in hunting and associated equipment for those dogs. The proposed amended language would be necessary for such purposes.

Amend Section 265, Title 14, CCR, by adding new subsections (d)(1) and (d)(2) to prohibit the use of treeing switches and GPS collar equipment for dogs used in the taking of mammals.

**Benefits of the regulations**

The regulation prohibits the use of treeing switches or GPS equipped collars on dogs used for the pursuit/take of mammals.

**Consistency and Compatibility with State Regulations**

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate hunting in California. Commission staff has searched the California Code of Regulations and has found no other agency with the authority to regulate the use of dogs for hunting mammals. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Hilton Garden Inn San Diego Mission Valley/Stadium, 3805 Murphy Canyon Road, San Diego, California, on Thursday, December 8, 2016 at 8:00 a.m.; or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Santa Rosa, California, on February 8, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard (a specific location will be determined and provided to interested and affected parties). It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on January 19, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on February 3, 2017. All comments must be received no later than February 8,

2017, at the hearing in Santa Rosa, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

#### **Availability of Documents**

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Jon Snellstrom at the preceding address or phone number. **Craig Stowers, Environmental Program Manager, Department of Fish and Wildlife, phone (916) 445-3553**, has been designated to respond to questions on the substance of the proposed Use of Dogs for Pursuit regulations. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

#### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations will affect a limited number of hunters who pursue mammals with dogs. These hunters may still use other, non-GPS radio collar technology to track and retrieve dogs during the hunt.

- (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 proposed action will not have significant impacts 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. Sales of GPS collars are not anticipated to decrease as a result of the proposed regulation because GPS collars can still be used by dog owners in a wide variety of applications other than hunting. The Commission does not anticipate benefits to the health and welfare of California Residents, benefits to worker safety, nor to the State's environment.

(c) **Cost Impacts on Representative Private Persons/Business:**

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:** None.

(e) **Other 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:** None.

(h) **Effect on Housing Costs:** None.

**Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

**Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**FISH AND GAME COMMISSION**

Dated: November 1, 2016

Valerie Termini  
Executive Director

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## Fish and Game Commission



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### CALIFORNIA FISH AND GAME COMMISSION NOTICE OF FINAL CONSIDERATION OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2078, the California Fish and Game Commission (Commission), will consider potential listing of flat-tailed horned lizard (*Phrynosoma mcallii*) under the California Endangered Species Act at a hearing to be held on December 7-8, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. The hearing is to be held at the Hilton Garden Inn San Diego Mission Valley/Stadium, 3805 Murphy Canyon Road, San Diego, California.

The full agenda, once published, and the video archive of previous meetings where actions were taken on flat-tailed horned lizard are available online at <http://www.fgc.ca.gov/meetings/>.

Pursuant to the provisions of Fish and Game Code sections 2075 and 2075.5, the Commission will consider the petition and all other information in the record before the Commission to determine whether listing flat-tailed horned lizard as an endangered species is warranted.

The petition, the California Department of Fish and Wildlife status review report, and other information in the record before the Commission are posted on the Commission website at <http://www.fgc.ca.gov/CESA/index.aspx#fthl>.

Fish and Game Commission

November 8, 2016

Valerie Termini  
Executive Director

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## Fish and Game Commission



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STANISLAUS COUNTY  
ENVIRONMENTAL RESOURCES

November 15, 2016

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Final Consideration regarding the flat-tailed horned lizard which will be published in the California Regulatory Notice Register on November 18, 2016.

Sincerely,

  
Sheri Tiemann  
Associate Governmental Program Analyst

Attachment

**Commissioners**  
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Saint Helena

**Jacque Hostler-Carmesin**, Vice President  
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NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2078, the California Fish and Game Commission (Commission), will consider potential listing of flat-tailed horned lizard (*Phrynosoma mcallii*) under the California Endangered Species Act at a hearing to be held on December 7-8, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. The hearing is to be held at the Hilton Garden Inn San Diego Mission Valley/Stadium, 3805 Murphy Canyon Road, San Diego, California.

The full agenda, once published, and the video archive of previous meetings where actions were taken on flat-tailed horned lizard are available online at <http://www.fgc.ca.gov/meetings/>.

Pursuant to the provisions of Fish and Game Code sections 2075 and 2075.5, the Commission will consider the petition and all other information in the record before the Commission to determine whether listing flat-tailed horned lizard as an endangered species is warranted.

The petition, the California Department of Fish and Wildlife status review report, and other information in the record before the Commission are posted on the Commission website at <http://www.fgc.ca.gov/CESA/index.aspx#fthl>.

Fish and Game Commission

November 8, 2016

Valerie Termini  
Executive Director

**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
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Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 8, 2016



### NOTICE OF PROPOSED EMERGENCY ACTION

#### Emergency Abalone Take Reduction Due to Harmful Environmental Conditions

Pursuant to the requirements of Government Code Section 11346.1(a)(1), the Fish and Game Commission (Commission) is providing notice of proposed emergency action with regard to the above-entitled emergency regulation.

#### SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail or e-mail, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail or e-mail must be received at OAL within five days after the Commission submits the emergency regulations to OAL for review.

Please reference submitted comments as regarding "Abalone Take Reduction" addressed to:

**Mailing Address:** Reference Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

California Fish and Game Commission  
Attn: Sheri Tiemann  
1416 Ninth Street, Rm. 1320  
Sacramento, CA 95814

**E-mail Address:** [staff@oal.ca.gov](mailto:staff@oal.ca.gov)  
**Fax No.:** 916-323-6826

[fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov)

For the status of the Commission's submittal to OAL for review, and the end of the five-day written submittal period, please consult OAL's website at <http://www.oal.ca.gov> under the heading "Emergency Regulations."

CALIFORNIA FISH AND GAME COMMISSION  
FINDING OF EMERGENCY AND  
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to  
Amend subsections (b) and (c) of Section 29.15,  
Title 14, California Code of Regulations  
Re: Emergency Abalone Take Reduction Due to Harmful Environmental Conditions

Date of Statement: December 8, 2016

**I. Statement of Facts Constituting the Need for Emergency Regulatory Action**

The recreational red abalone (*Haliotis rufescens*) fishery is one of California's most successful and popular fisheries, and is economically important, particularly to Sonoma and Mendocino counties where approximately 95 percent of the multi-million dollar fishery takes place. Over 25,000 fishermen participate in the fishery each year. Red abalone may be taken with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission).

Under existing statute (Fish and Game Code Section 5521) and regulation (Section 29.15, Title 14, CCR), abalone may only be taken for recreational purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay, except in the closed Fort Ross area. The current regulation also specifies the season, hours, daily and annual limits, special gear provisions, measuring devices, abalone report card requirements, and minimum size. Red abalone may only be collected by skin diving (without SCUBA) or rock picking during low tides, so that a deep-water refuge population is maintained to enhance productivity of the fishery. The recreational red abalone season is scheduled to open April 1, 2017.

In 2005, the Commission adopted the Abalone Recovery and Management Plan (ARMP) pursuant to requirements in statute (Fish and Game Code Section 5522), to provide a cohesive framework for recovering depleted abalone populations in southern California, and for managing the northern California fishery and future fisheries, including red abalone. The ARMP articulates a framework for sustaining abalone populations based largely on densities, catch, size, and reproductive success as triggers for adjusting total allowable catch (TAC) and engaging other management measures. Using criteria described in the ARMP, the TAC is adjusted when specific triggers are met, through various management actions such as changes to daily bag limits, seasonal limits, and season length.

In 2013, when average densities in northern California fell below established triggers and site closure triggers were met, the Commission took action to adjust the TAC from 280,000 to 190,000, with the goal to sufficiently reduce take such that densities would stop declining and eventually recover to target densities. The

Commission also took management action to meet the adjusted TAC by amending the annual limit for abalone north of the Mendocino/Sonoma county line from 24 to 18, amending the annual limit south of the Mendocino/Sonoma county line from 24 to 9, and moving the start time for fishing from one half hour before sunrise to 8:00 a.m. The Fort Ross area was closed to abalone fishing as a result of hitting the closure trigger. The new regulations went into effect in 2014, resulting in a 35 percent decline in take to approximately 148,000; in 2015, take was down 31 percent from 2013 at approximately 155,000.

In 2015, a combination of unprecedented environmental and biological stressors began to take their toll on abalone populations, including warmer-than-normal waters and decreasing food resources, leading to starvation conditions. Throughout 2016, the Department of Fish and Wildlife (Department) has conducted surveys, visual assessments, and histological sampling of north coast abalone, and has also been documenting citizen reports of unhealthy or moribund abalone within the fishery. The Department has identified wide-sweeping changes in the density, occurrence, size and health of red abalone and the kelp upon which it depends for food. Specifically, the Department has found:

- **Warm Water Conditions and Kelp and Algae Declines.** Red abalone are herbivores that live on rocky reefs in kelp forests, eating red and brown algae. In 2014, the kelp forests in the abalone fishery region declined by 93 percent due to extreme warm water conditions and an unprecedented increase in herbivorous red and purple sea urchin populations. Unlike abalone, sea urchin populations are generally resilient to food shortages and can survive longer, such that even if water conditions cool, grazing pressure from surviving sea urchins may still keep kelp from wide-spread recovery. Warm water conditions persisted through 2015, impacting kelp recovery and abalone health. Recently there has been some improvement in kelp growth with cooler water this year, but the warm water appears to be returning this fall and current kelp canopies are still very sparse compared to normal years. Recent oceanographic reports suggest that warm-water conditions may return again in 2017.
- **Starvation Conditions.** Red abalone are susceptible to starvation when kelp and algal abundances decline. Kelp and other algal species are being actively cleared from rocky bottom habitat that is dominated by purple sea urchin, which is greater than sixty times more abundant now than prior to 2013. Urchin populations increased, in part, due to large-scale loss of predatory starfish species in 2013 due to sea star wasting disease. Bull kelp and other algal food sources for abalone have remained at extremely low levels since 2014; the large number of purple urchins is likely keeping kelp recovery confined to very limited areas.

Abalone have been observed stacked on top of each other in shallow water, which could be attributed to either abalone moving from deeper water to shallower water where algae is slightly more abundant, or abalone trying to graze whatever algae is growing on the shells of other abalone; shells were observed to be unusually clean of algal growth.

Recent evidence indicates the starvation conditions have not yet abated; additional impacts are expected through the 2017 and 2018 seasons.

- **Density Declines.** In spite of the Commission's 2013 actions to reduce take and recover densities, the actions were ineffective in preventing densities from continuing to decline, from an average of 0.47 per square meter ( $m^2$ ) in 2013 to 0.44 per  $m^2$  in 2016. The Department believes the density decline is largely due to the environmental conditions described herein.
- **Deep-Water Refuge.** Deep-water refuge is believed to be a critical component in maintaining a highly productive recreational fishery. Deep-water abalone are generally safe from take and can be a source of both adults to replace abalone removed from shallower waters and larvae to enhance abalone reproduction rates. Summer of 2016 surveys showed dramatic reductions in abalone densities in deep water refuges (greater than 28 foot depths). The average density of deep-water red abalone populations over the past four years has declined below the ARMP management trigger and increases the risk that the fishery is not sustainable. It should be noted that abalone movement from deep water into shallow water or from cryptic locations to exposed shallow areas can give the impression that abalone populations are stable or have increased if the absence of abalone in deeper waters is not considered.
- **Abalone Health, Reproduction, and Mortality.** The abundance of warm water, coupled with a lack of algae, has severely impacted the health and reproductive development of abalone. Fishermen and the public have reported weak, shrunk, and dying abalone, as well as unusually high numbers of empty shells of all size classes throughout 2016. Department surveys revealed more than 25 percent of catch at 10 survey sites had body mass that was shrunk (meat smaller than the shell). Reductions in body mass lead to reduced reproductive fitness; just a 20% reduction in body mass can reduce reproduction by 60-90 percent. Red abalone require approximately 12 years to grow to minimum legal size, so that multi-year gaps in reproduction will be observed in the fishery for years to come. Furthermore, recent laboratory feeding studies of starved wild red abalone indicate that reproductive capability may take more than one year to recover to normal levels after algal conditions improve.

The weakened condition of abalone may also reduce their ability to withstand normal storm waves during the winter of 2016 – 2017, and increase mortality. Both 2015 and 2016 were poor reproduction years compared with previous average or good years, which may put future sustainability of the fishery at risk. Lack of kelp and other algae greatly reduces cover for red abalone, making them easier to locate by fishermen.



## **Existence of an Emergency and Need for Immediate Action**

The Department considered the following factors in determining whether an emergency exists: The magnitude of potential harm; the existence of a crisis situation; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation. Department field surveys in 2015 and 2016 demonstrate that all these factors have been met. The Department is proposing emergency regulatory action because the urgency of the situation requires actions to go into effect prior to the start of the upcoming 2017 season, to allow adequate time to communicate the changes to affected stakeholders and amend abalone report cards. The Department will also recommend making the proposed emergency regulations permanent pursuant to a standard rulemaking because the impacts from the harmful conditions are expected to be long-lasting.

## **Studies, Reports, or Documents Supporting Factual Emergency**

The Department relied on the following documents in proposing this emergency rulemaking action:

- (1) The Abalone Recovery and Management Plan  
<https://www.wildlife.ca.gov/Conservation/Marine/ARMP>

Department staff has documented critical negative impacts to red abalone fishing grounds:

- (1) A dramatic decline in sea stars, important sea urchin predators, due to sea star disease.
- (2) A dramatic decline (93 percent) of the kelp canopy in Sonoma and Mendocino counties in 2014.
- (3) A dramatic increase (60 times) in the density of purple sea urchins in 2015, increasing competition with abalone for food.
- (4) Warm seawater conditions in Sonoma and Mendocino counties in 2014 and 2015.
- (5) A lack of kelp, which increases the efficiency of fishing efforts in shallow habitats.
- (6) A decline in deep-water abalone densities.
- (7) Continued decline in overall average abalone densities in spite of significant take reductions implemented in 2014.

Department staff has documented critical negative impacts to red abalone health:

- (1) Visual abalone body health scores for abalone taken in the fishery during the spring of 2016 show that more than 25 percent of abalone were shrunk in body mass at sites in northern California.
- (2) Body condition index declined at Van Damme State Park by 20 percent, but no significant difference was observed at Fort Ross in summer of 2016 (60 abalone per site).

- (3) Department staff and abalone fishermen have observed weak abalone washed up on shore and easy to remove from the rocks as well as many new shells of all size classes, indicating increased natural mortality.

Department staff has documented critical negative impacts to red abalone reproduction:

- (1) Gonad index declined significantly at Van Damme State Park and at Fort Ross in the summer of 2016 (60 abalone per site).
- (2) Small numbers of larval abalone observed in plankton surveys in Sonoma and Mendocino counties in 2015.
- (3) Small numbers of newly settled abalone observed in coralline-covered rock samples from Sonoma and Mendocino counties in 2015.
- (4) Few juvenile (< 21 millimeter) red abalone observed in artificial reefs in Van Damme State Park in 2015.

### **Regulatory Proposal**

The ARMP provides the framework for regulatory proposals that should be designed to maintain the sustainability of the resource and fishery. The Department makes the following determinations in regards to the ARMP:

- (1) The existing TAC is 190,000 (amended 2013).
- (2) The deep density trigger requires 25 percent reduction in TAC, which equates to reducing TAC from 190,000 to 142,500.
- (3) Average densities continue to decline leading to a second trigger requiring an additional 25 percent reduction in TAC, which equates to reducing it from 142,500 to 106,875.
- (4) The new TAC would be 107,000 (rounding to the nearest thousand).
- (5) While considerable uncertainty exists under the current conditions regarding how the abalone population will respond, all factors are currently negative. Marine protected areas provide a benefit in protecting a segment of the population from fishing pressure, but do not necessarily help the fishery or the stock in terms of the current negative environmental conditions that are affecting both.

The proposed regulation to achieve the specified TAC are based on catch patterns, human behavior, and the many uncertainties of future conditions. Public input to date indicates reductions in take should primarily come from the annual limit rather than the daily limit. Season changes can produce savings, but because efforts can shift to other months, yield is unpredictable and likely less than otherwise expected. Considerable uncertainty exists regarding the response by fishermen to new restrictions and, therefore, actual take. Table 1 provides an analysis of likely take using changes to the annual limit along with some season reductions. Fishermen have consistently and clearly indicated that a reduction to the daily bag limit is considered an action of last resort and therefore has not

been considered or recommended in this regulation change as other options provide reasonable alternatives for likely achieving the specified TAC.

Table 1. Estimated take based on changes to annual limit and with season length reductions

| Target TAC = 107,000<br>Daily Bag limit = 3              | Annual Limit |         |         |         |         |
|----------------------------------------------------------|--------------|---------|---------|---------|---------|
|                                                          | 6            | 9       | 12      | 15      | 18      |
| Estimated Catch                                          | 93,000       | 119,000 | 136,000 | 149,000 | 155,000 |
| Estimated Catch +<br>November Closure                    | 91,000       | 118,000 | 135,000 | 147,000 | 155,000 |
| Estimated Catch +<br>November Closure +<br>April Closure | 80,000       | 104,000 | 119,000 | 129,000 | 136,000 |

Based on the analysis summarized in Table 1, the Department proposes:

- a. Reduce annual limit from 18 to 12, with the exception that the lower limit of "not more than 9 abalone of the yearly trip limit may be taken south of the boundary between Sonoma and Mendocino Counties" found in subsection 29.15(c) will continue to apply.
- b. Reduce season by closing November and April
- c. Estimated take = 119,000

The Department understands the importance of the recreational red abalone fishery and its sustainability. The Department's recommendation is proposed as a result of discussions at the November 15, 2016 Marine Resources Committee, which is designed to achieve the desired take reduction through fewer days on the water (season length) and a lower total take opportunity (annual limit) in the open area above the Mendocino/Sonoma county line.

The Department's recommendation is based on the numerous uncertainties and risks involved and the impacts to fishermen from such dramatic reductions. The current environmental conditions are unprecedented and the impacts to the abalone resource are yet to be fully realized or understood. Not implementing significant reductions in take risks pushing an already stressed population below sustainable levels. We have already witnessed the consequences of inaction, which resulted in the imposition of a statutory moratorium of the fishery south of San Francisco since 1997.

The Department expects a larger savings the first year with a rebound the following year; this is not unusual behavior when drastic changes are made to recreational fisheries. The Department is not recommending closure of the abalone fishery because abalone population densities (0.44 abalone per m<sup>2</sup>) are above the ARMP's fishery closure trigger of 0.3 abalone per m<sup>2</sup>.

In the absence of this emergency regulation, take of abalone at current levels would continue during the coming season on abalone populations that have declined below minimum sustainable levels prescribed in the ARMP for the deep water (refuge) segment of their range. These emergency regulations are designed to protect broodstock during this period of harmful environmental

conditions when abalone is exceptionally vulnerable to both high natural and fishing mortalities. This period is clearly one of reduced productivity of the abalone population and it is uncertain how long the unfavorable conditions will persist. Even with improved environmental conditions, the fishery will remain at risk due to reduced productivity for more than one year. The decline of the deep-water refuge population, coupled with ongoing starvation conditions and subsequent poor abalone body condition, presents an emergency situation requiring immediate management action to protect the fishery.

The Commission received public input on a potential emergency action at the November 15, 2016 meeting of the Marine Resources Committee, where the Department reported on the most recent survey findings, and at the Commission's December 7-8, 2016 meeting.

## **II. 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (b) Nondiscretionary Costs/Savings to Local Agencies: None.
- (c) Programs Mandated on Local Agencies or School Districts: None.
- (d) 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.
- (e) Effect on Housing Costs: None.

## **III. Authority and Reference**

The Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 240, and 5520 of the Fish and Game Code and to implement, interpret, or make more specific sections 200, 202, 205, 220, 240, and 5520 of said code.

## **IV. Section 240 Finding**

Pursuant to Section 240 of the Fish and Game Code, the Commission finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish (abalone).

### Informative Digest (Plain English Overview)

The recreational red abalone (*Haliotis rufescens*) fishery is one of California's most successful and popular fisheries, and is economically important, particularly to Sonoma and Mendocino counties where approximately 95 percent of the multi-million dollar fishery takes place. Over 25,000 fishermen participate in the fishery each year. Red abalone may be taken with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission).

Under existing statute (Fish and Game Code Section 5521) and regulation (Section 29.15, Title 14, CCR), red abalone may only be taken for recreational purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay, except in the closed Fort Ross area. The current regulation also specifies the season, hours, daily limits, special gear provisions, measuring devices, abalone report card requirements, and minimum size. Red abalone may only be collected by skin diving (without SCUBA) or rock picking during low tides. The recreational red abalone season is scheduled to open April 1, 2017.

The Department has identified wide-sweeping changes in the density, occurrence, size and health of red abalone and the kelp upon which it depends for food. Specifically, the Department has found warm water conditions, kelp and algae declines, starvation conditions, abalone density declines, movement from deep-water refuge, and negative impacts on abalone health, reproduction and mortality.

To determine whether an emergency exists, the Department considered the following factors: The magnitude of potential harm; the existence of a crisis situation; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation. Department field surveys in 2015 and 2016 demonstrate that all these factors have been met.

The Department has confirmed that management triggers under the Abalone Recovery and Management Plan (ARMP) have been reached calling for a reduction of fishery catch and is recommending this reduction be approved due to harmful environmental conditions for abalone.

### **Proposed Regulatory Action**

The proposed emergency regulation will reduce the take of abalone within the entire fishery to levels anticipated to be sustainable under current environmental conditions.

Acting under the guidance contained in the ARMP, the Department requests the Commission take emergency action to reduce allowable take by amending abalone subsections (b) and (c) of Section 29.15, Title 14, CCR, to reduce the red abalone allowable annual take from 18 to 12 abalone, with the exception that the lower limit of "not more than 9 abalone of the yearly trip limit may be taken south of the boundary between Sonoma and Mendocino Counties" found in subsection 29.15(c) will continue to apply, and to close April and November to fishing.

Benefits: The proposed emergency reduction within the abalone fishery will benefit the environment by protecting the valuable abalone resource from excessive fishing mortality, which will allow the resource the opportunity to rebuild and be sustainable for the future.

Consistency and Compatibility with Existing State Regulations: The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code, sections 200, 202, and 205). No other state agency has the authority to promulgate such regulations. The Commission has conducted a search of Title 14, CCR and determined that the proposed regulation is neither inconsistent nor incompatible with existing State regulations and that the proposed regulations are consistent with other sport fishing regulations and marine protected area regulations in Title 14, CCR.

## Regulatory Language

§ 29.15. Title 14, CCR is amended to read:

§ 29.15. Abalone.

(b) Open Season and Hours:

(1) Open Season: Abalone may be taken only during the months of ~~April, May, June,~~ August, September, and October ~~and November~~.

(2) Open Hours: Abalone may be taken only from 8:00 AM to one-half hour after sunset.

(c) Bag Limit and Yearly Trip Limit: Three red abalone, *Haliotis rufescens*, may be taken per day. No more than three abalone may be possessed at any time. No other species of abalone may be taken or possessed. Each person taking abalone shall stop detaching abalone when the limit of three is reached. No person shall take more than ~~18~~ 12 abalone during a calendar year. In the Open Area as defined in subsections 29.15(a) and 29.15(a)(1) above, not more than 9 abalone of the yearly trip limit may be taken south of the boundary between Sonoma and Mendocino Counties.

*[No changes to subsections (a) and (d) through (h)]*

Note: Authority cited: Sections 200, 202, 205, 210, 220, 240, 5520, 5521, and 7149.8, Fish and Game Code. Reference: Sections 200, 202, 205, 220, 5520, 5521, 7145 and 7149.8, Fish and Game Code.

6

**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
**Russell Burns, Member**  
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**Valerie Termini, Executive Director**  
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Sacramento, CA 95814  
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## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 9, 2016

### TO ALL AFFECTED AND INTERESTED PARTIES:

**Re: Use of Dogs for Pursuit/Take of Mammals, Section 265, Title 14, California Code of Regulations; published in California Notice Register, November 18, 2016, Notice File No. Z2016-1108-06, Register 2016, No. 47-Z.**

In addition to this mailing, this document is available for public inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, at 1416 Ninth Street, Room 1320, Sacramento, CA or on our website (link provided below).

Notice was given that any person interested may present statements, orally or in writing, relevant to this rulemaking at an adoption hearing to be held on February 8, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard. It was further noticed that a specific location would be determined and provided to interested and affected parties.

This notice is to inform you that the location for the scheduled adoption hearing on February 8, 2017 meeting, at 8:00 a.m. is:

DoubleTree by Hilton Hotel Sonoma  
One Doubletree Drive  
Rohnert Park, CA 94928

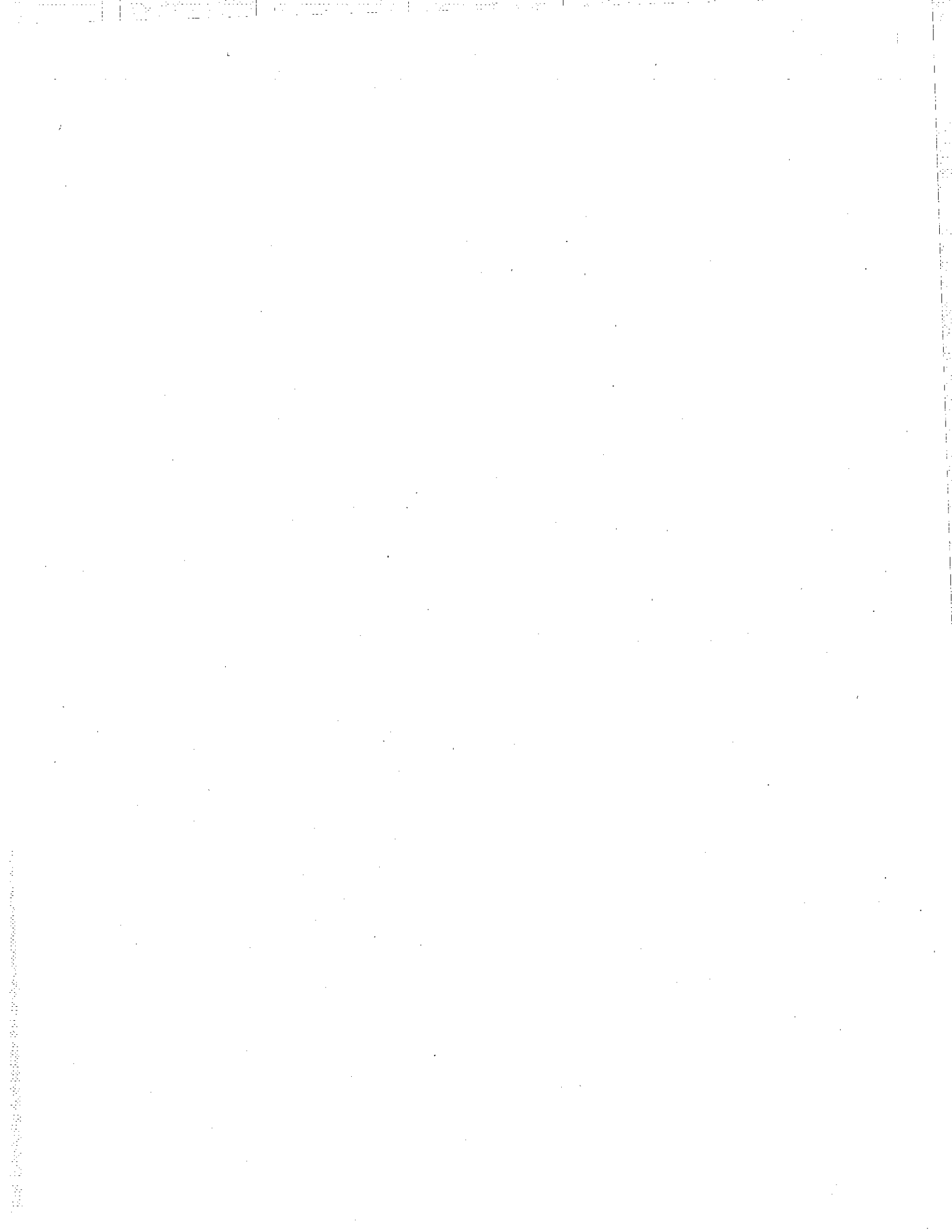
Additional information and all associated documents may be found on the Fish and Game Commission website at [http://www.fgc.ca.gov/regulations/2016/index.aspx#265\\_2](http://www.fgc.ca.gov/regulations/2016/index.aspx#265_2).

Sincerely,

  
Jon D. Snellstrom

Associate Governmental Program Analyst





Commissioners  
Eric Sklar, President  
Saint Helena  
Jacque Hostler-Carmesin, Vice President  
McKinleyville  
Anthony C. Williams, Member  
Huntington Beach  
Russell E. Burns, Member  
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## Fish and Game Commission



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Sacramento, CA 95814  
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DEC 27 2016

STANISLAUS COUNTY  
ENVIRONMENTAL RESOURCES

December 14, 2016

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a Notice of Findings regarding the petition to list coast yellow leptosiphon as endangered under the California Endangered Species Act. This notice will be published in the California Regulatory Notice Register on December 23, 2016.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Tiemann".  
Sheri Tiemann  
Associate Governmental Program Analyst

Attachment

**Commissioners**  
**Eric Sklar, President**  
Saint Helena

**Jacque Hostler-Carmesin, Vice President**  
McKinleyville

**Anthony C. Williams, Member**  
Huntington Beach

**Russell E. Burns, Member**  
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**Peter S. Silva, Member**  
Chula Vista

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1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
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## **Fish and Game Commission**



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### **CALIFORNIA FISH AND GAME COMMISSION NOTICE OF FINDINGS**

#### **Coast Yellow Leptosiphon (*Leptosiphon croceus*)**

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the California Fish and Game Commission (Commission), at its December 8, 2016, meeting in San Diego, California, accepted for consideration the petition submitted to list coast yellow leptosiphon as an endangered species. Pursuant to subdivision (e)(2) of Section 2074.2 of the Fish and Game Code, the Commission determined that the amount of information contained in the petition, when considered in light of the Department of Fish and Wildlife's (Department) written report, the comments received, and the remainder of the administrative record, would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur.

Based on that finding and the acceptance of the petition, the Commission is also providing notice that the aforementioned species is a candidate species as defined by Section 2068 of the Fish and Game Code.

Within one year of the date of publication of this notice of findings, the Department shall submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. Copies of the petition, as well as minutes of the December 8, 2016 Commission meeting, are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, California 95814, phone (916) 653-4899. Written comments or data related to the petitioned action should be directed to the Commission at the aforementioned address.

Fish and Game Commission

December 13, 2016

Valerie Termini  
Executive Director

Commissioners  
Eric Sklar, President  
Saint Helena  
Jacque Hostler-Carmesin, Vice President  
McKinleyville  
Anthony C. Williams, Member  
Huntington Beach  
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## Fish and Game Commission



Wildlife Heritage and Conservation  
Since 1870

December 14, 2016

### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action resulting from the Commission's August 25, 2016 meeting, when it made a finding pursuant to Section 2075.5, Fish and Game Code, that listing Livermore tarplant as endangered under the California Endangered Species Act is warranted. The notice of proposed regulatory action will be published in the California Regulatory Notice Register on December 23, 2016.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Mr. Jeb Bjerke, Department of Fish and Wildlife, phone (916) 651-6594 or email [Jeb.Bjerke@wildlife.ca.gov](mailto:Jeb.Bjerke@wildlife.ca.gov), has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Tiemann".

Sheri Tiemann

Associate Governmental Program Analyst

Attachment



## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections: 1904 and 2070 of the Fish and Game Code and to implement, interpret or make specific Sections 1755, 1904, 2062, 2067, 2070, 2072.7 and 2075.5 of said Code, proposes to amend Section 670.2, Title 14, California Code of Regulations, relating to Plants of California Declared to be Endangered, Threatened or Rare.

### **Informative Digest/Policy Statement Overview**

Section 670.2 of Title 14, California Code of Regulations (CCR), provides a list, established by the California Fish and Game Commission (Commission), of plants designated as endangered, threatened or rare in California. The Commission has the authority to add or remove species from this list if it finds that the action is warranted.

As required by Fish and Game Code Section 2075.5, subsection (e)(2), the Commission must initiate proceedings in accordance with the Administrative Procedure Act to amend subsection (a)(2) of Section 670.2, to add Livermore tarplant (*Deinandra bacigalupii*) to the list of endangered plants.

In making the recommendation to list Livermore tarplant pursuant to the California Endangered Species Act, the Department identified the following primary threats: 1) recent and ongoing development and changes in land use; 2) impacts from invasive species; 3) recreation activities; 4) herbicide use; and 5) the vulnerability of small populations. More detail about the current status of Livermore tarplant can be found in the Report to the Fish and Game Commission, "Status Review of Livermore Tarplant (*Deinandra bacigalupii*)" (Department of Fish and Wildlife, April 2016).

The proposed regulation will benefit the environment by protecting Livermore tarplant as an endangered species.

Commission staff has searched the California Code of Regulations and has found that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. No other state entity has the authority to list threatened and endangered species.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Rohnert Park, California, on February 8, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard at the DoubleTree by Hilton Hotel Sonoma, One Doubletree Drive, Rohnert Park, CA 94928. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on January 26, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received on February 6, 2017. All comments must be received no later than February 8, 2017, at the hearing in Rohnert Park, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

### **Availability of Documents**

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for

the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Sheri Tiemann at the preceding address or phone number. **Jeb Bjerke, Department of Fish and Wildlife, phone (916) 651-6594 or email [Jeb.Bjerke@wildlife.ca.gov](mailto:Jeb.Bjerke@wildlife.ca.gov), has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial 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 statutes of the California Endangered Species Act (CESA) do 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.

CESA is basically a two-stage process. During the first 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 second stage, the Commission follows the statutes of 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. In this regard, the provisions of CESA leading to a finding are in apparent conflict with Section 11346.3, which is activated by the rulemaking component of CESA.

Since the finding portion of CESA 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 Livermore tarplant as endangered will subject it to the provisions of CESA. This Act prohibits take and possession except as may be permitted by the Department, the Native Plant Protection Act, or the California Desert Native Plants Act.

Endangered status is not expected to result in any significant adverse economic effect on small business or significant cost to private persons or entities undertaking activities subject to the California Environmental Quality Act (CEQA). CEQA requires local governments and private applicants undertaking projects subject to CEQA 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 Section 670.2 (CEQA Guidelines, Section 15380). Livermore tarplant has qualified for protection under the CEQA Guidelines Section 15380 since its formal scientific description in 1999.

Required mitigation as a result of lead agency actions under 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. Lead agencies may also require additional actions should the mitigation measures fail, resulting in added expenditures by the proponent. If the mitigation measures required by the CEQA lead agency do not minimize and fully mitigate to the standards of 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 entire distribution of Livermore tarplant is limited to four occurrences in and near the city of Livermore, California. Because of this localized distribution, adding Livermore tarplant to the list of endangered species under CESA is unlikely to affect the creation or elimination of jobs or businesses within the state as a whole.

The Commission does not anticipate benefits to the health and welfare of California residents or to worker safety.

The Commission anticipates benefits to the State's environment by the protection of Livermore tarplant.

- (c) Cost Impacts on Representative Private Persons/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 Section 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.

Although it is unlikely that the listing of Livermore tarplant will have an adverse economic impact, it should be noted that most populations of Livermore tarplant occur on private property. Such private holdings are subject to possible sale and/or development, which could be impacted by this listing action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other 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: None.
- (h) Effect on Housing Costs: None.

#### **Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

#### **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Valerie Termini  
Executive Director

Dated: December 13, 2016

**Commissioners**  
**Eric Sklar, President**  
 Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
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**Anthony C. Williams, Member**  
 Huntington Beach  
**Russell Burns, Member**  
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**Peter Silva, Member**  
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STATE OF CALIFORNIA  
 Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
 1416 Ninth Street, Room 1320  
 Sacramento, CA 95814  
 (916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
 Since 1870

December 23, 2016

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending section 708.5, Title 14, California Code of Regulations, relating to deer tagging and reporting, which is published in the California Regulatory Notice Register on December 23, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx>.

**Craig Stowers, Environmental Program Manager, Department of Fish and Wildlife,** phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

**Jon D. Snellstrom**  
 Associate Governmental Program Analyst

Attachment



## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, and 1050 of the Fish and Game Code and to implement, interpret or make specific Sections 1050 and 4336 of said Code, proposes to amend Section 708.5, Title 14, California Code of Regulations, relating to deer tagging and reporting requirements.

### **Informative Digest/Policy Statement Overview**

The proposed amendments in Section 708.5 are intended to clarify the methods by which hunters may comply with mandatory deer harvest reporting. The amendments will: 1) eliminate "in person" delivery of report cards to the Department; and 2) add a provision stating "If a report card is submitted by mail and not received by the department, it is considered not reported."

### **Non-monetary benefits to the public**

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

### **Consistency and Compatibility with State Regulations**

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate deer hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to deer tag reporting are consistent with Sections 1.74, 361, 701, 702, 708.5 and 708.6 of Title 14. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

### **Benefits of the regulations**

The proposed changes in reporting deer harvest will clarify that the Department cannot receive report cards "in person"; and that the responsibility for compliance, regardless of report cards lost in the mail, is on the hunter. This may provide an incentive for hunters to enter their own data online or to check their online accounts to assure compliance in a timely fashion. The report card contains important information which the Department uses to measure deer populations and other vital data essential to the exercise of its responsibilities.

### **Consistency and Compatibility with State Regulations**

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate hunting in California. Commission staff has searched the California Code of Regulations and has found no other agency with the authority to regulate the use of dogs for hunting mammals. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the DoubleTree by Hilton Hotel Sonoma, One Doubletree Drive, Rohnert Park, California, on Wednesday, February 22, 2017 at 8:00 a.m. or, as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on April 12, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 21, 2017. All comments must be received no later than February 8, 2017, at the hearing in Santa Rosa, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

#### **Availability of Documents**

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Jon Snellstrom at the preceding address or phone number. **Craig Stowers, Environmental Program Manager, (916) 445-3553**, has been designated to respond to questions on the substance of the proposed Use of Dogs for Pursuit regulations. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

#### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

The proposed action will not have a significant statewide adverse economic impact

directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action clarifies the methods available to individuals, not businesses, for the required reporting of their deer hunting activity.

- (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 anticipates benefits to the health and welfare of California residents and to the state's environment. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources and the action contributes to the sustainable management of natural resources. Improved deer tag reporting will also improve the Department's ability to sustainably manage deer populations in the state.

The proposed action will not have significant impacts on jobs or business within California because no significant changes in hunting activity levels are anticipated. The proposed action does not provide benefits to worker safety.

- (c) Cost Impacts on Private Persons:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action. Under the current regulation, hunters are required to report their deer hunting activity. The proposed action to amend the regulation clarifies the methods available to individuals for the required reporting and does not impose any additional cost to do so.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Other 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: None
- (h) Effect on Housing Costs: None

#### **Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

### **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Valerie Termini  
Executive Director

Dated: December 15, 2016

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**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
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**Peter Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

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[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 23, 2016

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending sections 360, 361, 362, 363, 364 and 364.1, Title 14, California Code of Regulations, relating to mammal regulations, which is published in the California Regulatory Notice Register on December 23, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx>.

**Craig Stowers, Environmental Program Manager, Department of Fish and Wildlife,** phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon D. Snellstrom".

Jon D. Snellstrom  
Associate Governmental Program Analyst

Attachment





**TITLE 14. Fish and Game Commission**  
**Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 3960, 3960.2 and 3960.4 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 203, 203.1, and 207 of said Code, proposes to amend sections 360, 361, 362, 363, 364, and 364.1, Title 14, California Code of Regulations, relating to mammal hunting requirements.

**Informative Digest/Policy Statement Overview**

**Subsection 360(b)**

Existing regulations provide for the number of deer hunting tags for the X zones. The proposed action changes the number of tags for all existing zones to a series of ranges presented in the table below. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected in March/April. Because various environmental factors such as severe winter conditions can adversely affect herd recruitment and over-winter adult survival, the final recommended quotas may fall below the current proposed range into the "Low Kill" alternative identified in the most recent Environmental Document Regarding Deer Hunting.

| <b>Deer: § 360(b) X-Zone Hunts<br/>Tag Allocations</b> |             |                     |                                  |
|--------------------------------------------------------|-------------|---------------------|----------------------------------|
| <b>§</b>                                               | <b>Zone</b> | <b>Current 2016</b> | <b>Proposed 2017<br/>[Range]</b> |
| (1)                                                    | X-1         | 760                 | 0 - 6,000                        |
| (2)                                                    | X-2         | 175                 | 0 - 500                          |
| (3)                                                    | X-3a        | 355                 | 0 - 1,200                        |
| (4)                                                    | X-3b        | 795                 | 0 - 3,000                        |
| (5)                                                    | X-4         | 460                 | 0 - 1,200                        |
| (6)                                                    | X-5a        | 75                  | 0 - 200                          |
| (7)                                                    | X-5b        | 50                  | 0 - 500                          |
| (8)                                                    | X-6a        | 330                 | 0 - 1,200                        |
| (9)                                                    | X-6b        | 310                 | 0 - 1,200                        |
| (10)                                                   | X-7a        | 230                 | 0 - 500                          |
| (11)                                                   | X-7b        | 135                 | 0 - 200                          |
| (12)                                                   | X-8         | 210                 | 0 - 750                          |
| (13)                                                   | X-9a        | 650                 | 0 - 1,200                        |
| (14)                                                   | X-9b        | 325                 | 0 - 600                          |
| (15)                                                   | X-9c        | 325                 | 0 - 600                          |
| (16)                                                   | X-10        | 400                 | 0 - 600                          |

|      |      |     |           |
|------|------|-----|-----------|
| (17) | X-12 | 680 | 0 - 1,200 |
|------|------|-----|-----------|

### **Subsection 360(c)**

Existing regulations provide for the number of deer hunting tags in the Additional Hunts. The proposed action provides a range of tag numbers for each hunt from which a final number will be determined, based on the post-winter status of each deer herd. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected in March/April. Because various environmental factors such as severe winter conditions can adversely affect herd recruitment and over-winter adult survival, the final recommended quotas may fall below the current proposed range into the "Low Kill" alternative identified in the most recent Environmental Document Regarding Deer Hunting.

Existing regulations for Additional Hunts G-8 (Fort Hunter Liggett Antlerless Deer Hunt) and J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt) provide for hunting to begin on October 8 and continue for three (3) consecutive days and reopen on October 15 and continue for two (2) consecutive days, including the Columbus Day holiday. The proposal would modify the season to account for the annual calendar shift. The proposal would change the season dates to open on October 7 and October 14, for 3 and 2 consecutive days respectively, and include the Columbus Day holiday.

Existing regulations for Additional Hunt G-10 (Camp Pendleton Either-Sex Hunt) provide for hunting to begin on the first Saturday in September and extend through the first Sunday in December and allows hunting on Saturdays, Sundays, holidays and the day after Thanksgiving. The proposal would allow for the calendar shift and allow hunting on Fridays, Saturdays, Sundays, Labor Day, Columbus Day and Veterans Day.

Existing regulations for Additional Hunt G-11 (Vandenberg Either-Sex Deer Hunt) provide for hunting to begin on the last Monday in August and extend through December 31. The proposal would allow hunting to begin on August 28 and extend through October 1.

Minor editorial changes are necessary to provide consistency in subsection numbering, spelling, grammar, and clarification.

The proposed action changes the number of tags for all existing hunts (except those on military installations) to a series of ranges as indicated in the table below.

| <b>Deer: § 360(c) Additional Hunts</b> |                                          |                     |                                  |
|----------------------------------------|------------------------------------------|---------------------|----------------------------------|
| <b>Tag Allocations</b>                 |                                          |                     |                                  |
| <b>§</b>                               | <b>Hunt Number (and Title)</b>           | <b>Current 2016</b> | <b>Proposed 2017<br/>[Range]</b> |
| (1)                                    | G-1 (Late Season Buck Hunt for Zone C-4) | 2,710               | 0 - 5,000                        |
| (2)                                    | G-3 (Goodale Buck Hunt)                  | 35                  | 0 - 50                           |
| (3)                                    | G-6 (Kern River Deer Herd Buck Hunt)     | 50                  | 0 - 100                          |
| (4)                                    | G-7 (Beale Either-Sex Deer Hunt)         | 20 Military*        | 20 Military*                     |

|      |                                                                         |                                                                                  |                                                                                  |
|------|-------------------------------------------------------------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| (5)  | G-8 (Fort Hunter Liggett Antlerless Deer Hunt)                          | 20 Tags Total*<br>(10 Military &<br>10 Public)                                   | 20 Tags Total*<br>(10 Military<br>and 10 Public)                                 |
| (6)  | G-9 (Camp Roberts Antlerless Deer Hunt)                                 | 0                                                                                | 30 Tags Total*<br>(15 Military<br>and 15 Public)                                 |
| (7)  | G-10 (Camp Pendleton Either-Sex Deer Hunt)                              | 250 Military*                                                                    | 250 Military*                                                                    |
| (8)  | G-11 (Vandenberg Either-Sex Deer Hunt)                                  | 200 Military*,<br>DOD and as<br>Authorized by<br>the Installation<br>Commander** | 200 Military*,<br>DOD and as<br>Authorized by<br>the Installation<br>Commander** |
| (9)  | G-12 (Gray Lodge Shotgun Either-Sex Deer Hunt)                          | 30                                                                               | 0 - 50                                                                           |
| (10) | G-13 (San Diego Antlerless Deer Hunt)                                   | 300                                                                              | 0 - 300                                                                          |
| (11) | G-19 (Sutter-Yuba Wildlife Areas Either-Sex Deer Hunt)                  | 25                                                                               | 0 - 50                                                                           |
| (12) | G-21 (Ventana Wilderness Buck Hunt)                                     | 25                                                                               | 0 - 100                                                                          |
| (13) | G-37 (Anderson Flat Buck Hunt)                                          | 25                                                                               | 0 - 50                                                                           |
| (14) | G-38 (X-10 Late Season Buck Hunt)                                       | 300                                                                              | 0 - 300                                                                          |
| (15) | G-39 (Round Valley Late Season Buck Hunt)                               | 5                                                                                | 0 - 150                                                                          |
| (16) | M-3 (Doyle Muzzleloading Rifle Buck Hunt)                               | 20                                                                               | 0 - 75                                                                           |
| (17) | M-4 (Horse Lake Muzzleloading Rifle Buck Hunt)                          | 5                                                                                | 0 - 50                                                                           |
| (18) | M-5 (East Lassen Muzzleloading Rifle Buck Hunt)                         | 5                                                                                | 0 - 50                                                                           |
| (19) | M-6 (San Diego Muzzleloading Rifle Either-Sex Deer Hunt)                | 80                                                                               | 0 - 100                                                                          |
| (20) | M-7 (Ventura Muzzleloading Rifle Either-Sex Deer Hunt)                  | 150                                                                              | 0 - 150                                                                          |
| (21) | M-8 (Bass Hill Muzzleloading Rifle Buck Hunt)                           | 20                                                                               | 0 - 50                                                                           |
| (22) | M-9 (Devil's Garden Muzzleloading Rifle Buck Hunt)                      | 15                                                                               | 0 - 100                                                                          |
| (23) | M-11 (Northwestern California Muzzleloading Rifle Buck Hunt)            | 20                                                                               | 0 - 200                                                                          |
| (24) | MA-1 (San Luis Obispo Muzzleloading Rifle/Archery Either-Sex Deer Hunt) | 150                                                                              | 0 - 150                                                                          |
| (25) | MA-3 (Santa Barbara Muzzleloading Rifle/Archery Buck Hunt)              | 150                                                                              | 0 - 150                                                                          |
| (26) | J-1 Lake Sonoma Apprentice Either-Sex Deer Hunt)                        | 25                                                                               | 0 - 25                                                                           |

|      |                                                                    |                                             |                                             |
|------|--------------------------------------------------------------------|---------------------------------------------|---------------------------------------------|
| (27) | J-3 (Tehama Wildlife Area Apprentice Buck Hunt)                    | 15                                          | 0 - 30                                      |
| (28) | J-4 Shasta-Trinity Apprentice Buck Hunt)                           | 15                                          | 0 - 50                                      |
| (29) | J-7 (Carson River Apprentice Either-Sex Deer Hunt)                 | 15                                          | 0 - 50                                      |
| (30) | J-8 (Daugherty Hill Wildlife Area Apprentice Either-Sex Deer Hunt) | 15                                          | 0 - 20                                      |
| (31) | J-9 (Little Dry Creek Apprentice Shotgun Either-Sex Deer Hunt)     | 5                                           | 0 - 10                                      |
| (32) | J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt)         | 75 Tags Total*<br>(15 Military & 60 Public) | 85 Tags Total*<br>(25 Military & 60 Public) |
| (33) | J-11 (San Bernardino Apprentice Either-Sex Deer Hunt)              | 40                                          | 0 - 50                                      |
| (34) | J-12 (Round Valley Apprentice Buck Hunt)                           | 10                                          | 0 - 20                                      |
| (35) | J-13 (Los Angeles Apprentice Either-Sex Deer Hunt)                 | 40                                          | 0 - 100                                     |
| (36) | J-14 (Riverside Apprentice Either-Sex Deer Hunt)                   | 30                                          | 0 - 75                                      |
| (37) | J-15 (Anderson Flat Apprentice Buck Hunt)                          | 10                                          | 0 - 30                                      |
| (38) | J-16 (Bucks Mountain-Nevada City Apprentice Either-Sex Deer Hunt)  | 75                                          | 0 - 75                                      |
| (39) | J-17 (Blue Canyon Apprentice Either-Sex Deer Hunt)                 | 25                                          | 0 - 25                                      |
| (40) | J-18 (Pacific-Grizzly Flat Apprentice Either-Sex Deer Hunt)        | 75                                          | 0 - 75                                      |
| (41) | J-19 (Zone X-7a Apprentice Either-Sex Deer Hunt)                   | 25                                          | 0 - 40                                      |
| (42) | J-20 (Zone X-7b Apprentice Either-Sex Deer Hunt)                   | 20                                          | 0 - 20                                      |
| (43) | J-21 (East Tehama Apprentice Either-Sex Deer Hunt)                 | 50                                          | 0 - 80                                      |

*\*Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.*

*\*\*DOD = Department of Defense and eligible personnel as authorized by the Installation Commander.*

### **Section 361**

Existing regulations provide for the number of deer hunting tags for existing area-specific archery hunts. The proposed action changes the number of tags for existing hunts to a series of ranges presented in the table below. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected in March/April. Because various environmental factors such as severe winter conditions can adversely affect herd recruitment and over-winter adult survival, the final recommended quotas may fall below the current proposed range into the "Low Kill" alternative identified in the most recent Environmental Document Regarding Deer Hunting.

Existing regulations for Hunt A-33 (Fort Hunter Liggett Late Season Archery Either Sex Hunt) provide for hunting to begin on the first Saturday in October and end on November 11. The proposal would modify the season to allow for the annual calendar shift by opening the season on the first Saturday in October and ending on November 12.

| <b>Archery Deer Hunting: § 361(b)</b> |                                                                     |                                             |                                             |
|---------------------------------------|---------------------------------------------------------------------|---------------------------------------------|---------------------------------------------|
| <b>Tag Allocations</b>                |                                                                     |                                             |                                             |
| <b>§</b>                              | <b>Hunt Number (and Title)</b>                                      | <b>Current 2016</b>                         | <b>Proposed 2017 [Range]</b>                |
| (1)                                   | A-1 (C Zones Archery Only Hunt)                                     | 1,945                                       | [ 0 - 3,000 ]                               |
| (2)                                   | A-3 (Zone X-1 Archery Hunt)                                         | 100                                         | [ 0 - 1,000 ]                               |
| (3)                                   | A-4 (Zone X-2 Archery Hunt)                                         | 10                                          | [ 0 - 100 ]                                 |
| (4)                                   | A-5 (Zone X-3a Archery Hunt)                                        | 40                                          | [ 0 - 300 ]                                 |
| (5)                                   | A-6 (Zone X-3b Archery Hunt)                                        | 70                                          | [ 0 - 400 ]                                 |
| (6)                                   | A-7 (Zone X-4 Archery Hunt)                                         | 120                                         | [ 0 - 400 ]                                 |
| (7)                                   | A-8 (Zone X-5a Archery Hunt)                                        | 15                                          | [ 0 - 100 ]                                 |
| (8)                                   | A-9 (Zone X-5b Archery Hunt)                                        | 5                                           | [ 0 - 100 ]                                 |
| (9)                                   | A-11 (Zone X-6a Archery Hunt)                                       | 50                                          | [ 0 - 200 ]                                 |
| (10)                                  | A-12 (Zone X-6b Archery Hunt)                                       | 90                                          | [ 0 - 200 ]                                 |
| (11)                                  | A-13 (Zone X-7a Archery Hunt)                                       | 45                                          | [ 0 - 200 ]                                 |
| (12)                                  | A-14 (Zone X-7b Archery Hunt)                                       | 25                                          | [ 0 - 100 ]                                 |
| (13)                                  | A-15 (Zone X-8 Archery Hunt)                                        | 40                                          | [ 0 - 100 ]                                 |
| (14)                                  | A-16 (Zone X-9a Archery Hunt)                                       | 140                                         | [ 0 - 500 ]                                 |
| (15)                                  | A-17 (Zone X-9b Archery Hunt)                                       | 300                                         | [ 0 - 500 ]                                 |
| (16)                                  | A-18 (Zone X-9c Archery Hunt)                                       | 350                                         | [ 0 - 500 ]                                 |
| (17)                                  | A-19 (Zone X-10 Archery Hunt)                                       | 100                                         | [ 0 - 200 ]                                 |
| (18)                                  | A-20 (Zone X-12 Archery Hunt)                                       | 100                                         | [ 0 - 500 ]                                 |
| (19)                                  | A-21 (Anderson Flat Archery Buck Hunt)                              | 25                                          | [ 0 - 100 ]                                 |
| (20)                                  | A-22 (San Diego Archery Either-Sex Deer Hunt)                       | 1,000                                       | [ 0 - 1,500 ]                               |
| (21)                                  | A-24 (Monterey Archery Either-Sex Deer Hunt)                        | 100                                         | [ 0 - 200 ]                                 |
| (22)                                  | A-25 (Lake Sonoma Archery Either-Sex Deer Hunt)                     | 35                                          | [ 0 - 75 ]                                  |
| (23)                                  | A-26 (Bass Hill Archery Buck Hunt)                                  | 30                                          | [ 0 - 100 ]                                 |
| (24)                                  | A-27 (Devil's Garden Archery Buck Hunt)                             | 5                                           | [ 0 - 75 ]                                  |
| (25)                                  | A-30 (Covelo Archery Buck Hunt)                                     | 40                                          | [ 0 - 100 ]                                 |
| (26)                                  | A-31 (Los Angeles Archery Either-Sex Deer Hunt)                     | 1,000                                       | [ 0 - 1,500 ]                               |
| (27)                                  | A-32 (Ventura/Los Angeles Archery Late Season Either-Sex Deer Hunt) | 250                                         | [ 0 - 300 ]                                 |
| (28)                                  | A-33 (Fort Hunter Liggett Late Season Archery Either-Sex Deer Hunt) | 50 Tags Total*<br>(25 Military & 25 Public) | 50 Tags Total*<br>(25 Military & 25 Public) |

\* Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.

The current regulation in Section 362, T14, CCR, provides for limited hunting of Nelson bighorn rams in specified areas of the State. The proposed amendments are intended to adjust the number of hunting tags for the 2017 season based on the Department's annual estimate of the population in each of the nine hunt zones. The Department's final recommendations will ensure that the take will be no more than 15 percent of the mature rams estimated in each zone in accordance with Fish and Game Code Section 4902.

Preliminarily, the tag numbers are presented as ranges (e.g., [0-3]) in the table in subsection 362(d) of the amended Regulatory Text. Final tag quotas for each zone will be identified and recommended to the Fish and Game Commission at the April 26, 2017 adoption hearing.

### **Section 363**

Amend Section 363, Pronghorn Antelope, Title 14, California Code of Regulations (CCR).

In accordance with management goals and objectives, and in order to maintain hunting quality, tag quotas for Pronghorn Antelope hunts need to be adjusted annually. Current regulations specify the number of pronghorn antelope hunting tags for the 2016 season. This proposed regulatory action will amend subsection 363(m) providing the number of tags for hunting in 2017.

Preliminarily, the tag numbers are presented as ranges (e.g., [0-3]) in the table in subsection 363(m) of the amended Regulatory Text. Final tag quotas for each zone will be identified and recommended to the Fish and Game Commission at the April 26, 2017, adoption hearing.

Other minor changes to the regulatory text to reduce redundancy, improve accuracy and clarity are proposed.

### **Section 364**

Existing regulations in Section 364, Title 14, CCR, specify elk license tag quotas for each hunt. In order to achieve elk herd management goals and objectives and maintain hunting quality, it is periodically necessary to adjust quotas, seasons, hunt areas and other criteria in response to dynamic environmental and biological conditions. The proposed amendments to Section 364 will establish 2017 tag quotas within each hunt area, adjusting for annual fluctuations in population number, season dates, and tag distribution.

The complete amended text is found in the amended Regulatory Text of Section 364 with the Initial Statement of Reasons.

#### **Proposed Amendments:**

- Establish the Goodale Tule Elk Hunt in the western part of the Independence zone. The Department is recommending adding a new subsection 364(d)(10)(A) establishing a Goodale General Methods Tule Elk Hunt.
- In order to achieve appropriate harvest levels and maintain hunting quality, it is necessary to annually adjust quotas (total number of tags) in response to dynamic environmental and biological conditions. Subsections 364(r) through (aa) specify elk license tag quotas for each hunt in accordance with management goals and objectives.

- **Modify Season Dates.** The Department makes many different times and seasons of the year available to the public. In order to provide opportunity for hunters, the Department modifies the calendar day for the start of individual hunts and the number of days of hunting. The proposed table sets forth the recommended days for each hunt.
- **Minor Editorial Changes** are proposed to improve clarity and reduce redundancy.

### **Section 364.1**

Existing regulations in Section 364.1, Title 14, CCR, specify elk license tag quotas for each SHARE hunt. In order to achieve elk herd management goals and objectives and maintain hunting quality, it is periodically necessary to adjust quotas, seasons, hunt areas and other criteria, in response to dynamic environmental and biological conditions. The proposed amendments to Section 364.1 will establish 2017 tag quotas within each hunt adjusting for annual fluctuations in population number, season dates, and tag distribution.

- **Modify SHARE Hunt.** The Department is recommending establishing a new Goodale SHARE hunt in subsection 364(1)(10).
- **Modify Tag Quotas.** In order to achieve appropriate harvest levels and maintain hunting quality it is necessary to annually adjust quotas (total number of tags) in response to dynamic environmental and biological conditions. Section 364 regulations specify elk license tag quotas for each hunt in accordance with management goals and objectives.

Other minor editorial changes and renumbering have also been made.

### **Non-monetary benefits to the public**

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

### **Consistency and Compatibility with State Regulations**

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate elk hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to elk tag allocations are consistent with Title 14. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

### **Benefits of the regulations**

Sections 360 and 361 - The deer herd management plans specify objective levels for the proportion of bucks in the herds. These ratios are maintained and managed in part by annually modifying the number of hunting tags. The final values for the license tag numbers will be based upon findings from the annual harvest and herd composition counts. Adjusting tag allocations in response to current deer herd conditions contributes to the sustainable management of healthy deer populations and the maintenance of continued hunting opportunities.



Section 362 - The Nelson Bighorn Sheep management plans specify objective levels for the herds. These ratios are maintained and managed in part by annually modifying the number of tags. The final values for the license tag numbers will be based upon findings from the population surveys. Adjusting tag allocations in response to current herd conditions contributes to the sustainable management of healthy bighorn sheep populations and the maintenance of continued hunting opportunities.

Section 363 - The management plans specify objective levels for the antelope herds. These levels are maintained and managed in part by annually modifying the number of tags. The final values for the license tag numbers will be based upon findings from the population surveys. Adjusting tag allocations in response to current herd conditions contributes to the sustainable management of healthy pronghorn antelope populations and the maintenance of continued hunting opportunities.

Section 364 - The proposed elk regulations will contribute to the sustainable management of elk populations in California. Existing elk herd management goals specify objective levels for the proportion of bulls in the herds. These ratios are maintained and managed in part by annually modifying the number of tags. The final values for the license tag numbers will be based upon findings from annual harvest and herd composition counts.

Section 364.1 - The proposed elk SHARE regulations will contribute to the sustainable management of elk populations in California. Existing elk herd management goals specify objective levels for the proportion of bulls in the herds. These ratios are maintained and managed in part by annually modifying the number of tags. The final values for the license tag numbers will be based upon findings from annual harvest and herd composition counts in accordance with management goals and objectives.

### **Consistency and Compatibility with State Regulations**

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate hunting in California. Commission staff has searched the California Code of Regulations and has found no other agency with the authority to regulate the use of dogs for hunting mammals. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the DoubleTree by Hilton Hotel Sonoma, One Doubletree Drive, Rohnert Park, California, on Wednesday, February 22, 2017 at 8:00 a.m. or, as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on April 12, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 21, 2017. All comments must be received no later than February 8, 2017, at the hearing in Santa Rosa, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

### Availability of Documents

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Jon Snellstrom at the preceding address or phone number. **Craig Stowers, Environmental Program Manager, (916) 445-3553**, has been designated to respond to questions on the substance of the proposed Use of Dogs for Pursuit regulations. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### Impact of Regulatory Action/Results of the Economic Impact Assessment

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action adjusts tag quotas for existing deer hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

- (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 proposed action will not have significant impacts on the creation or elimination of jobs or the creation of new businesses or the elimination of existing businesses within California because it is unlikely to result in a change in hunting effort. The proposed action does not provide benefits to worker safety because it does not address working conditions.

The Commission anticipates benefits to the health and welfare of California residents. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources. The Commission anticipates benefits to the State's environment in the sustainable management of natural resources.

- (c) Cost Impacts on Private Persons:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Other 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: None
- (h) Effect on Housing Costs: None

#### **Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

### **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### **FISH AND GAME COMMISSION**

Valerie Termini  
Executive Director

Dated: December 15, 2016



**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
**Russell Burns, Member**  
Napa  
**Peter Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 23, 2016

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending section 502, Title 14, California Code of Regulations, relating to waterfowl regulations, which is published in the California Regulatory Notice Register on December 23, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx>.

**Melanie Weaver, Senior Environmental Scientist, Department of Fish and Wildlife at (916) 445-3717, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

  
**Jon D. Snellstrom**  
Associate Governmental Program Analyst

Attachment



## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 202 and 355 of the Fish and Game Code and to implement, interpret or make specific Sections 202, 355, and 356 of said Code, proposes to amend Section 502, Title 14, California Code of Regulations, relating to Waterfowl regulations.

### **Informative Digest/Policy Statement Overview**

Current regulations in Section 502, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season opening and closing dates, and establish daily bag and possession limits for waterfowl hunting.

The frameworks for the 2017-18 season have been approved by the Flyway Councils and will be considered for adoption at the Service Regulation's Committee meeting on October 25-26, 2016. The proposed frameworks allow for a liberal duck season which includes a 107 day season, 7 daily duck limit including 7 mallards but only 2 hen mallards, 1 pintail, 2 canvasback, 2 redheads, and 3 scaup (during an 86 day season). Duck daily bag limit ranges, duck season length ranges and goose season length ranges have been provided to allow the Commission flexibility. Lastly, Federal regulations require that California's hunting regulations conform to those of Arizona in the Colorado River Zone and with those of Oregon in the North Coast Special Management Area. Based on the frameworks, the Department of Fish and Wildlife (Department) provides an annual recommendation to the Fish and Game Commission.

The Department recommendations are as follows:

1. Modify the boundary descriptions in subsections 502(b)3 and 4 for the Southern California and Colorado River zones.
2. Allow the white-fronted goose season to be split into three segments in subsection 502(d)(1)B for the Northeastern California Zone.
3. Increase the daily bag limit for white geese in subsection 502(d)(4)(C) for the Colorado River Zone from 10 to 20 per day.

Minor editorial changes are also proposed to clarify and simplify the regulations and to comply with existing federal frameworks.

### **Non-monetary benefits to the public**

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

### **Evaluation of incompatibility with existing regulations**

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to Section 502 are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate waterfowl hunting regulations.



| Summary of Proposed Waterfowl Hunting Regulations for 2017-18                                                                                                      |                                                                                                                                                                                                             |                                                                                                                                  |                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AREA                                                                                                                                                               | SPECIES                                                                                                                                                                                                     | SEASONS                                                                                                                          | DAILY BAG & POSSESSION LIMITS                                                                                                                                                                                                                                                                             |
| Statewide                                                                                                                                                          | Coots & Moorhens                                                                                                                                                                                            | Concurrent w/duck season                                                                                                         | 25/day. 75 in possession                                                                                                                                                                                                                                                                                  |
| <b>Northeastern Zone</b><br>Season may be split for Ducks, Pintail, Canvasback, Scaup, Dark Geese and White Geese. White geese and dark geese may be split 3-ways. | Ducks                                                                                                                                                                                                       | Between 38 & 105 days                                                                                                            | [4-7]/day, which may include: [3-7] mallards no more than [1-2] females, 1 pintail, 2 canvasback, 2 redheads, 3 scaup.<br>Possession limit triple the daily bag.<br>30/day, which may include: 20 white geese, 10 dark geese no more than 2 Large Canada geese.<br>Possession limit triple the daily bag. |
|                                                                                                                                                                    | Scaup                                                                                                                                                                                                       | 86 days                                                                                                                          |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                    | Geese                                                                                                                                                                                                       | No longer than 105 days                                                                                                          |                                                                                                                                                                                                                                                                                                           |
| <b>Southern San Joaquin Valley Zone</b><br>Season may be split for Ducks, Pintail, Canvasback and Scaup.                                                           | Ducks                                                                                                                                                                                                       | Between 38 & 105 days                                                                                                            | [4-7]/day, which may include: [3-7] mallards no more than [1-2] females, 1 pintail, 2 canvasback, 2 redheads, 3 scaup.<br>Possession limit triple the daily bag.<br>30/day, which may include: 20 white geese, 10 dark geese.<br>Possession limit triple the daily bag.                                   |
|                                                                                                                                                                    | Scaup                                                                                                                                                                                                       | 86 days                                                                                                                          |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                    | Geese                                                                                                                                                                                                       | No longer than 100 days                                                                                                          |                                                                                                                                                                                                                                                                                                           |
| <b>Southern California Zone</b><br>Season may be split for Ducks, Pintail, Canvasback and Scaup.                                                                   | Ducks                                                                                                                                                                                                       | Between 38 & 100 days                                                                                                            | [4-7]/day, which may include: [3-7] mallards no more than [1-2] females, 1 pintail, 2 canvasback, 2 redheads, 3 scaup.<br>Possession limit triple the daily bag.<br>23/day, which may include: 20 white geese, 3 dark geese. Possession limit triple the daily bag.                                       |
|                                                                                                                                                                    | Scaup                                                                                                                                                                                                       | 86 days                                                                                                                          |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                    | Geese                                                                                                                                                                                                       | No longer than 100 days                                                                                                          |                                                                                                                                                                                                                                                                                                           |
| <b>Colorado River Zone</b><br>Season may be split for Ducks, Pintail, Canvasback and Scaup.                                                                        | Ducks                                                                                                                                                                                                       | 101 days                                                                                                                         | 7/day, which may include: 7 mallards no more than 2 females or Mexican-like ducks, 1 pintail, 2 canvasback, 2 redheads, 3 scaup.<br>Possession limit triple the daily bag.<br>24/day, up to 20 white geese, up to 4 dark geese.<br>Possession limit triple the daily bag.                                 |
|                                                                                                                                                                    | Scaup                                                                                                                                                                                                       | 86 days                                                                                                                          |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                    | Geese                                                                                                                                                                                                       | 101 days                                                                                                                         |                                                                                                                                                                                                                                                                                                           |
| <b>Balance of State Zone</b><br>Season may be split for Ducks, Pintail, Canvasback, Scaup and Dark and White Geese.                                                | Ducks                                                                                                                                                                                                       | Between 38 & 100 days                                                                                                            | [4-7]/day, which may include: [3-7] mallards no more than [1-2] females, 1 pintail, 2 canvasback, 2 redheads, 3 scaup.<br>Possession limit triple the daily bag.<br>30/day, which may include: 20 white geese, 10 dark geese.<br>Possession limit triple the daily bag.                                   |
|                                                                                                                                                                    | Scaup                                                                                                                                                                                                       | 86 days                                                                                                                          |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                    | Geese                                                                                                                                                                                                       | Early Season: 5 days (CAGO only)<br>Regular Season: no longer than 100 days<br>Late Season: 5 days (whitefronts and white geese) |                                                                                                                                                                                                                                                                                                           |
| <b>North Coast</b><br>Season may be split                                                                                                                          | All Canada Geese                                                                                                                                                                                            | 105 days except for Large Canada geese which cannot exceed 100 days or extend beyond the last Sunday in January.                 | 10/day, only 1 may be a Large Canada goose. Possession limit triple the daily bag. Large Canada geese are closed during the Late Season.                                                                                                                                                                  |
| Humboldt Bay South Spit (West Side)                                                                                                                                | All species                                                                                                                                                                                                 | Closed during brant season                                                                                                       |                                                                                                                                                                                                                                                                                                           |
| Sacramento Valley                                                                                                                                                  | White-fronted geese                                                                                                                                                                                         | Open concurrently with general goose season through Dec 21                                                                       | 3/day. Possession limit triple the daily bag.                                                                                                                                                                                                                                                             |
| Morro Bay                                                                                                                                                          | All species                                                                                                                                                                                                 | Open in designated areas only                                                                                                    | Waterfowl season opens concurrently with brant season.                                                                                                                                                                                                                                                    |
| Martis Creek Lake                                                                                                                                                  | All species                                                                                                                                                                                                 | Closed until Nov 16                                                                                                              |                                                                                                                                                                                                                                                                                                           |
| Northern Brant                                                                                                                                                     | Black Brant                                                                                                                                                                                                 | Open Nov 8 extending for 37 days                                                                                                 | 2/day. Possession limit triple the daily bag.                                                                                                                                                                                                                                                             |
| Balance of State Brant                                                                                                                                             | Black Brant                                                                                                                                                                                                 | Open Nov 9 extending for 37 days                                                                                                 | 2/day. Possession limit triple the daily bag.                                                                                                                                                                                                                                                             |
| Imperial County<br>Season may be split                                                                                                                             | White Geese                                                                                                                                                                                                 | Up to 102 days                                                                                                                   | 20/day. Possession limit triple the daily bag.                                                                                                                                                                                                                                                            |
| <b>YOUTH WATERFOWL HUNTING DAYS</b>                                                                                                                                | (NOTE: To participate in these Youth Waterfowl Hunts, federal regulations require that hunters must be 17 years of age or younger and must be accompanied by a non-hunting adult 18 years of age or older.) |                                                                                                                                  |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                    | SPECIES                                                                                                                                                                                                     | SEASON                                                                                                                           | DAILY BAG & POSSESSION LIMITS                                                                                                                                                                                                                                                                             |
| Northeastern Zone                                                                                                                                                  | Same as regular season                                                                                                                                                                                      | The Saturday fourteen days before the opening of waterfowl season extending for 2 days.                                          | Same as regular season                                                                                                                                                                                                                                                                                    |

| Summary of Proposed Waterfowl Hunting Regulations for 2017-18 |                        |                                                                               |                               |
|---------------------------------------------------------------|------------------------|-------------------------------------------------------------------------------|-------------------------------|
| AREA                                                          | SPECIES                | SEASONS                                                                       | DAILY BAG & POSSESSION LIMITS |
| Southern San Joaquin Valley Zone                              |                        | The Saturday following the closing of waterfowl season extending for 2 days.  |                               |
| Southern California Zone                                      |                        | The Saturday following the closing of waterfowl season extending for 2 days.  |                               |
| Colorado River Zone                                           |                        | The Saturday following the closing for waterfowl season extending for 2 days. |                               |
| Balance of State Zone                                         |                        | The Saturday following the closing of waterfowl season extending for 2 days.  |                               |
| FALCONRY OF DUCKS                                             | SPECIES                | SEASON                                                                        | DAILY BAG & POSSESSION LIMITS |
| Northeastern Zone                                             | Same as regular season | Between 38 and 105 days                                                       | 3/ day, possession limit 9    |
| Balance of State Zone                                         |                        | Between 38 and 107 days                                                       |                               |
| Southern San Joaquin Valley Zone                              |                        | Between 38 and 107 days                                                       |                               |
| Southern California Zone                                      |                        | Between 38 and 107 days                                                       |                               |
| Colorado River Zone                                           | Ducks only             | 105 days                                                                      |                               |

### **Benefits of the regulations**

The benefits of the proposed regulations are concurrence with federal law and the sustainable management of the State's waterfowl resources. Positive impacts to jobs and/or businesses that provide services to waterfowl hunters will be realized with the continued adoption of waterfowl hunting seasons in 2017-18.

### **Consistency and Compatibility with State Regulations**

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate hunting in California. Commission staff has searched the California Code of Regulations and has found no other agency with the authority to regulate the use of dogs for hunting mammals. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the DoubleTree by Hilton Hotel Sonoma, One Doubletree Drive, Rohnert Park, California, on Wednesday, February 22, 2017 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on April 12, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 21, 2017. All comments must be received no later than February 8, 2017, at the hearing in Santa Rosa, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

### **Availability of Documents**

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency

representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Jon Snellstrom at the preceding address or phone number. **Melanie Weaver, Senior Environmental Scientist, (916) 445-3717**, has been designated to respond to questions on the substance of the proposed Use of Dogs for Pursuit regulations. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations would provide additional recreational opportunity to the public and could result in minor increases in hunting days and hunter spending on equipment, fuel, food and accommodations.

- (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 proposed waterfowl regulations will set the 2017-18 waterfowl hunting season dates and bag limits within the federal frameworks. Little to minor positive impacts to jobs and/or businesses that provide services to waterfowl hunters may result from the proposed regulations for the waterfowl hunting season in 2017-18.

The most recent U.S. Fish and Wildlife national survey of fishing, hunting, and wildlife associated recreation for California (revised 2014), estimated that migratory bird hunters contributed about \$169,115,000 to businesses in California during the 2011 migratory bird hunting season. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed regulations is to sustainably manage waterfowl populations, and consequently, the long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources. The Commission anticipates benefits to the State's environment by the sustainable management of California's waterfowl resources. The Commission does not anticipate any impacts to worker safety because the proposed amendments will not affect working conditions.

(c) **Cost Impacts on a Representative Private Person or Business:**

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(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.**

**Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

### **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### **FISH AND GAME COMMISSION**

Dated: December 15, 2016

Valerie Termini  
Executive Director

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**Commissioners**  
**Eric Sklar, President**  
Saint Helena

**Jacque Hostler-Carmesin, Vice President**  
McKinleyville

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STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 19, 2016

### TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a notice of availability of a document added to the rulemaking file regarding the California Spiny Lobster Fishery Management Plan Implementing Regulations adopted at the Commission's June 22, 2016 meeting:

- Amended Initial Statement of Reasons for Regulatory Action dated October 18, 2016:

In addition to this mailing, this document is available for public inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, at 1416 Ninth Street, Room 1320, Sacramento, CA or on our website (link provided below).

The Amended Initial Statement of Reasons adds statements of necessity to Section III (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary; other clarifying statements; and, minor editorial changes. These statements are directly related to the revised proposed regulatory language in the California Spiny Lobster Fishery Management Plan implementing regulations. The California Spiny Lobster Fishery Management Plan, adopted by the Commission on April 13, 2016, is incorporated by reference in the amended regulatory language. Minor edits and additions or deletions for improved clarity, spelling, punctuation, etc., that do not affect content, are not shown.

Additional information and all associated documents may be found on the Fish and Game Commission website at [http://www.fgc.ca.gov/regulations/2016/index.aspx#29\\_80](http://www.fgc.ca.gov/regulations/2016/index.aspx#29_80).

Sincerely,

Sheri Tiemann  
Associate Governmental Program Analyst

Attachment



STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
**AMENDED** INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Subsections (b) and (g) of Section 29.80, Amend Subsections (a) and (c) and  
Add Subsection (f) of Section 29.90, Amend Sections 121, 121.5, 122, and 705, Add  
Article 5, Sections 54.00, 54.01, 54.02, and 54.03, and  
Add Sections 122.1, and 122.2, Title 14, California Code of Regulations  
Re: California Spiny Lobster Fishery Management Plan Implementing Regulations

**Additions to this amended Statement of Reasons are indicated with bold, double underlined text; deletions are indicated with ~~bold double strikeout text~~**

I. Date of Initial Statement of Reasons: February 24, 2016

**II. Date of Amended Initial Statement of Reasons: November 22, 2016**

**III.** Dates and Locations of Scheduled Hearings:

- |     |                     |                                                 |
|-----|---------------------|-------------------------------------------------|
| (a) | Notice Hearing:     | Date: February 10, 2016<br>Location: Sacramento |
| (b) | Discussion Hearing: | Date: April 13, 2016<br>Location: Santa Rosa    |
| (c) | Adoption Hearing:   | Date: June 22, 2016<br>Location: Bakersfield    |

**III.** Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

**The amended Initial Statement of Reasons adds statements of necessity to Section III (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary; other clarifying statements; and, minor editorial changes. These statements are directly related to the revised proposed regulatory text in the California Spiny Lobster Fishery Management Plan implementing regulations. The California Spiny Lobster Fishery Management Plan, adopted by the Commission on April 13, 2016, is incorporated by reference in the amended regulatory language. Minor edits and additions or deletions for improved clarity, spelling, punctuation, etc., that do not affect content, are not shown.**



Regulations are proposed to implement a Fishery Management Plan (FMP) for California spiny lobster (*Panulirus interruptus*) pursuant to the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code (FGC) sections 7070-7088 et seq.), which includes amending existing commercial and recreational lobster regulations to improve management of the spiny lobster fisheries and support orderly fisheries. The MLMA was passed to implement the State's policy of ensuring "the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State" (FGC Section 7050(b)).

The MLMA provides guidelines for the development and adoption of FMPs, including a description of the contents of FMPs (FGC sections 7075-7088 et seq.). The MLMA contemplates the management of state fishery resources through FMPs implemented by California Fish and Game Commission (Commission) regulations (FGC Section 7078). The process of developing FMPs and the implementing regulations is expected to make management objectives and marine fishery regulations more readily available and clearer to the Commission, the California Department of Fish and Wildlife (Department), and the public. The California Spiny Lobster FMP (attachment 1) ~~is scheduled for adoption~~ was adopted by the Commission at its April 2016 meeting.

An extensive public scoping process was used by the Department to inform development of the California Spiny Lobster FMP and the proposed implementing regulations. In accordance with the MLMA (FGC Section 7076(a)), the Department sought interested individuals representing a broad range of stakeholder interests to provide advice and assistance in developing the FMP. The Lobster Advisory Committee (LAC) was formed in the spring of 2012, following a call for volunteers by the Department. The LAC provided guidance on FMP objectives as well as management recommendations addressing key issues identified during the LAC process. The LAC consisted of representatives from the marine science community, the recreational fishing sector, commercial fishing sector, the non-consumptive recreational sector, the environmental community, and the federal government. Nine LAC meetings occurred between June 2012 and September 2013 (see Section e: Public Discussions of Proposed Regulations Prior to Notice Publication). All meetings of the LAC were open to the public, and public input was encouraged. Meeting announcements were posted on the Department's California Spiny Lobster FMP website and the public was encouraged to sign up for the California Spiny Lobster FMP news email service. Meeting summaries, as well as various background documents, are also available on the Department's website at [www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP/Involved](http://www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP/Involved).

Once ~~adopted and~~ implemented through the proposed regulations, the California Spiny Lobster FMP will establish a management program for the spiny lobster recreational and commercial fisheries and detail the procedures by which the Department manages and Commission regulates the spiny lobster resource. The California Spiny Lobster FMP prescribes a harvest control rule (HCR) for the spiny lobster fisheries (attachment 1; see section 4.3). The HCR serves as the foundation for managing the fisheries in the future as well as the primary mechanism to prevent, detect, and recover from

overfishing as required by the MLMA. The HCR is a type of adaptive management framework that identifies potential conservation problems and prescribes appropriate management response measures. The harvest control rule consists of three parts: 1) reference points, 2) a control rule matrix, and 3) conservation and management measures listed in the control rule toolbox. Reference points are the metrics used to gauge the status of the fishery. The three lobster reference points are: 1) Catch, 2) catch per unit effort (CPUE), and 3) spawning potential ratio (SPR).

In addition to providing input on development of the California Spiny Lobster FMP, the LAC also formed consensus on several commercial and recreational regulatory amendments that serve to create a more orderly and safe fishery, improve management, clarify regulations, and improve enforceability of regulations. The LAC proposals were compiled into a finalized consensus recommendation on September 11, 2013. Representatives from the Department met separately with the LAC recreational and commercial representatives to clarify and define the details for describing regulation changes that would be enforceable and effective (attachment 1; see Appendix IX). The LAC proposals along with the Department's recommendations (attachment 1; see Appendix IX) were submitted to the Commission for consideration at its April 2015 meeting. At the Commission's June 2015 meeting, the Commission directed the Department to prepare this regulatory package using the Department's commercial and recreational recommendations as part of ~~this~~the FMP and implementing regulations.

At the direction of the Commission, three LAC consensus recommendations are not included in this regulatory proposal; 1) restricting the use of mechanized pullers in the recreational fishery, 2) a phase-in approach to the commercial trap limit, and 3) clarifying the provisions for the branding of commercial floats. A description and rationale for excluding these three recommendations from this regulatory package is provided in the "Consideration of Alternatives" Section C.

Upon adoption of the California Spiny Lobster FMP by the Commission, a corresponding set of implementing regulations must be adopted to enact the FMP. The California Spiny Lobster FMP implementing regulations will:

- 1) establish a new Article in Chapter 5.5, Subdivision 1, Division 1, Title 14, California Code of Regulations (CCR);
- 2) amend existing recreational lobster fishery regulations;
- 3) amend existing commercial lobster fishery regulations;
- 4) modify existing commercial lobster logbook to collect additional data needed to manage the fishery;
- 5) amend lobster operator permit requirements and fees; and
- 6) create new regulations that establish applications for transferring permits and affidavits for requesting replacement trap tags and reporting trap loss.

Additionally, FGC subsection 7071(b) provides authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery. To implement

the conservation and management measurements identified in the FMP and the proposed trap limit, the implementing regulations ~~of this FMP~~ will render the following sections of FGC inoperative once ~~they~~the regulations are ~~adopted~~effective:

- 1) FGC sections 8251, 8252, and 8258. These sections prescribe the commercial season length, size limit, and list the Districts where commercial lobster traps may be used. The FMP contemplates changes to season length, minimum size and district closures as possible future conservation and management measures. The commercial season length and size limit will be moved into Title 14, CCR, reflecting the Commission's authority to make future adjustments.
- 2) FGC sections 7857(e), 7857(j), 8102, 8103, and 8254(c). These sections state the conditions for issuing and transferring commercial permits and lobster operator permit fees. Each will be made inoperative as they apply to the spiny lobster fishery to be consistent with the commercial spiny lobster limited entry fishery permit program described in the FMP and proposed trap limit program.
- 3) FGC section 9004: This section requires commercial fishermen to service any deployed trap every 96 hours. The proposed trap servicing regulation in new Section 122.2 will extend the servicing requirement to every 168 hours. As such, this section will be rendered inoperative as applied to the spiny lobster fishery.

The proposed regulations are drafted to serve the sustainability and social policy objectives enumerated in FGC Sections 7050, 7055, and 7056.

### ***Current Regulations***

Regulations used to manage spiny lobster recreational and commercial fisheries are found in multiple sections of Title 14 of the CCR. Section 29.80 provides general gear restrictions for the recreational take of crustaceans. Section 29.90 provides recreational fishery regulations specific to spiny lobster with report card requirements for the recreational fishery found in Section 29.91. Fishery management plan regulations are found in Chapter 5.5, Article 1, Section 50 et seq. Section 121 regulates the possession of spiny lobster during the closed season and Section 121.5 regulates the processing of spiny lobster. Section 122 provides regulations for the commercial fishery, including permit requirements, gear provisions, trap servicing requirements, restricted fishing areas, permit transfers, and logbook requirements.

### **Proposed Regulatory Changes**

By moving the rulemaking's effective date to April 1, 2017, references to the 2016-2017 regulations are no longer applicable; for that reason, the paragraph that follows has been deleted.

~~Proposed regulations that are substantive regulatory changes (e.g., commercial trap limit and change to the sport season opening time) are proposed to be effective for the 2017-18 spiny lobster season, not the upcoming 2016-17 season, which starts in October 2016. Proposed changes to sections 29.80(b)(2), 29.90(a), 121.5(e), 122(b)(3), 122(c)(2)(A), 122(c)(5)(A), 122.1(c), 122.2(b)(2), 122.2(d)(2), 122.2(f), and 122.2(i) will become effective with the 2017-18 lobster season.~~

~~Reasons for this delay are related to the additional time that will be needed for the Department to acquire trap tags for the proposed trap tag program for the commercial fishery. In addition, the delay is recommended so that the new regulations can be noticed in the commercial fishing digest and sport fishing booklets, which are already published for the 2016-17 season. By not delaying the substantive changes identified above, the information in the 2016-17 commercial fishing digest and sport fishing booklet will be outdated and will cause public confusion. The regulatory changes that will be effective upon adoption for the 2016-17 season are not new regulations but are either minor changes, FGC sections that are made inoperative and moved into Title 14, or reorganizing of existing regulations.~~

### 1) Recreational Regulation Adjustments

#### Amend Subsection 29.80(b)(2), Title 14, CCR; Hoop Net Servicing Requirements.

##### **Proposed Changes**

Current regulation states, "Any hoop net abandoned or left unchecked for more then 2 hours shall be considered abandoned and seized by any person authorized to enforce these regulations." This regulation change would correct wording from "then" to "than".

##### **Necessity and Rationale**

Non-substantive change to fix a grammatical error.

#### Add new Subsection 29.80(b)(3), Title 14, CCR; Marking Hoop Net Floats with GO ID Number.

##### **Proposed Changes**

Subsection 29.80(b) provides provisions relating to the recreational use of hoop nets to take crustaceans. Current regulations do not require hoop net floats to be marked.

~~Beginning on April 1, 2017,~~ The proposed subsection would require each hoop net used south of Point Arguello to have a surface buoy legibly marked with the operator's GO ID number as stated on his or her recreational fishing license or lobster report card to provide enforcement personnel with the ability to confirm the identity of each hoop net operator. Hoop nets deployed from shore ~~and~~ or manmade structures connected to the shore are not required to be marked with a surface buoy.

By moving the rulemaking's effective date to April 1, 2017, reference to "beginning on April 1, 2017" is unnecessary and has therefore been removed.

##### **Necessity and Rationale**

Currently, there is no requirement for marking hoop nets or attached floats to easily identify the individual using them; ~~improving accountability.~~ The proposed regulation will allow the Department's Law Enforcement Division (LED) to easily verify the operator of each hoop net in the field, improving accountability. This regulation would require each hoop net to have a surface buoy legibly marked with the operator's GO ID

number. These regulations will also identify the operator if the hoop net becomes abandoned or lost and is later recovered. The proposed regulation will help LED determine whether an operator is pulling his or her own hoop nets and to identify the operator of hoop nets that are used unlawfully in restricted fishing areas (e.g., Marine Protected Areas). A similar regulation is currently in place for recreational crab traps, where buoys are to be marked with the operator's GO ID number as listed on his or her sport fishing license (Section 29.80(c)(3)). The proposed regulation will only affect hoop nets used south of Point Arguello since the Department did not have the opportunity to scope the recreational fishery using hoop nets north of Point Arguello.

**Amend Subsection 29.80(g), Title 14, CCR; Clarifying Existing Language on the Possession of a Hooked Device While Taking Spiny Lobster.**

**Proposed Changes**

Subsection 29.80(g) provides provisions relating to the recreational take of crustaceans while diving and specifically states that while in pursuit of crustaceans divers may not possess any hooked device while diving or attempting to dive and that crustaceans can only be taken by hand. The proposed amendment will clarify that spearfishing gear may be possessed by divers while pursuing crustaceans so long as the gear is not used to aid in the take of lobsters; a crustacean.

**Necessity and Rationale**

Some divers carry spearfishing gear to opportunistically take fish while pursuing lobsters. This has led to different interpretations of what constitutes a "hooked device" and has resulted in citations for spear fishermen who were in possession of spearfishing gear while pursuing lobsters by hand. This proposed regulatory change will provide clarification for both recreational divers and LED. Proposed regulatory language will make it clear that possessing spearfishing gear is allowed while taking lobsters in compliance with all applicable regulations.

**Amend Subsection 29.90(a), Title 14, CCR; Recreational Season Opener.**

**Proposed Changes**

Currently, the regulation states that the recreational season opens at 12:01 a.m. (midnight) on the Saturday preceding the first Wednesday in October. ~~Beginning with the 2017-2018 spiny lobster season,~~ The proposed regulation would move the start of the recreational season six hours later from the current start time of 12:01 a.m. to 6:00 a.m.

**By moving the rulemaking's effective date to April 1, 2017, reference to "beginning with the 2017-2018 lobster season" is unnecessary and therefore has been removed.**

**Necessity and Rationale**

The current recreational season 12:01 a.m. start time has led to concerns over safety due to the numerous dive related accidents that routinely occur on opening nights. The

recreational lobster fishery is primarily a nighttime fishery for both divers and boat based anglers using hoop nets. The new 6:00 a.m. season start time will spread the initial recreational fishing effort across an entire day and night as opposed to bottlenecking the effort right at midnight. This should result in a safer, more orderly fishery opener for both boat-based fishermen and divers while also improving enforceability due to increased visibility during the early morning opener.

**Amend Subsection 29.90(c), Title 14, CCR; Measuring Spiny Lobster for Minimum Size Limit.**

**Proposed Changes**

Currently, this regulation allows for spiny lobster to be brought to the surface of the water to be measured, but it prohibits any sub-legal size lobsters from being brought aboard any vessel. The proposed regulation would allow for spiny lobster caught via hoop netting to be brought out of the water for measuring only. This would allow hoop net fishermen to bring lobster onto a boat, pier, or any platform from which they are fishing to measure lobster. Any sub-legal sized lobsters will still be required to be returned immediately to the water after measuring. Recreational lobster divers will still be required to measure all lobster while in the water.

**Necessity and Rationale**

The current requirement to measure spiny lobster before they are brought ~~aboard on board a~~ the vessel has been determined to be a safety issue for recreational hoop net fishermen who typically fish at night and have to lean over the side of a boat to measure spiny lobster at the surface of the water. In addition, it is not possible for someone fishing from a pier to measure lobster in the water. The proposed change will allow individuals to bring spiny lobster out of the water so they may be safely measured.

**Option to add new subsection 29.90(f) marking of spiny lobster linked to option 121.5(e) prohibiting the possession of marked spiny lobsters in markets.**  
**At its June 2016 meeting, the Commission chose not to pursue this option, so it has been removed.**

**Add new Subsection 29.90(f), Title 14, CCR; Requiring the Tail Clipping or Hole Punching of Spiny Lobsters Taken in the Recreational Fishery and Prohibiting the Release of Tail Clipped or Hole-Punched Spiny Lobster.**

**~~Proposed Changes~~**

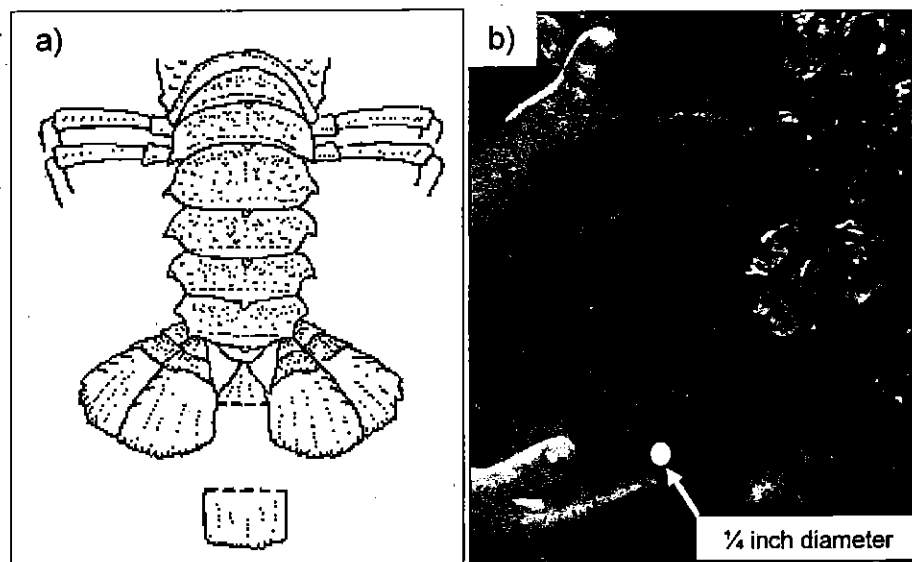
~~Currently, there is no regulation requiring the marking of spiny lobster to distinguish between those lobsters caught by the recreational and commercial fisheries. The proposed regulatory options would require recreational hoop netters and divers to:~~

~~Clip (Figure 1a) or hole punch (a minimum diameter of one fourth inch (1/4 inch), Figure 1b) the center tail fin of all retained spiny lobsters at or before the time catch information is required to be recorded on spiny lobster report cards (14 CCR Section 29.91(C)). The proposed regulation would also prohibit the release of tail clipped or hole-punched~~

~~lobster back into the water, with the exception of LED staff releasing hole-punched lobster that have been retained unlawfully that may be encountered during enforcement activities.~~

#### **Necessity and Rationale**

~~The recent rise in the ex-vessel value of spiny lobster (Figure 2) has provided increased incentive for the illegal commercialization of recreationally caught spiny lobsters. Some jurisdictions in other parts of the world require recreational fishermen to hole-punch the tail or remove the center tail fin of each lobster taken in the recreational fishery to distinguish recreationally caught lobsters from commercially caught lobsters. Requiring the clipping or hole-punching of the center tail flap is a simple tool to implement and enforce and can help prevent recreationally caught spiny lobsters from entering the black market. Proposed regulation also includes a prohibition on the release of recreationally caught spiny lobsters that are hole-punched or tail-clipped. This provision is to prevent hole-punched or tail-clip spiny lobsters from entering the commercial market. Some in the commercial sector have expressed a concern that recreational fishermen may intentionally release hole-punched or tail-clipped lobsters, which would make them unavailable for sale (as proposed in Section 121.5(e)) if caught by commercial fishermen.~~



**Figure 1. Proposed regulations for recreationally caught spiny lobster. Retained lobster will be required to have their center tail fin removed (a) or a hole punched in their center tail fin (minimum 1/4 inch diameter) (b) by the time that they are reported on spiny lobster report cards.**

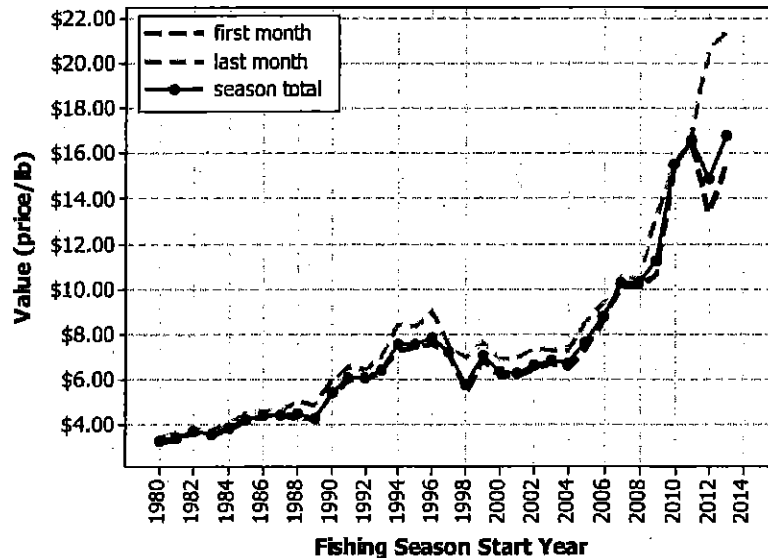


Figure 2. Average ex-vessel price/lb. of spiny lobster during the first month of the fishing season, last month of the fishing season, and total fishing season from 1980-2013 fishing seasons.

## 2) California Spiny Lobster Fishery Management Plan

### Add Article 5.0 to Chapter 5.5, Title 14, CCR; California Spiny Lobster Fishery Management Plan

#### **Proposed Regulation**

This regulatory proposal will add Article 5.0 California Spiny Lobster Fishery Management Plan to Chapter 5.5, specifically sections 54.00, 54.01, 54.02, and 54.03 to Chapter 5.5 within Title 14 of the CCR. Regulations within Chapter 5.5 of Title 14 of the CCR primarily describe the overarching management strategy of the State's FMPs. FMPs generally describe the: 1) purpose and scope of each FMP, 2) relevant definitions used in each FMP, 3) process and timing of management, and 4) details regarding the management framework (e.g., harvest control rules, allocations). The new Article for the California Spiny Lobster FMP will contain four Sections: 54.00 Purpose and Scope, 54.01 Definitions, 54.02 Management Process and Timing, and 54.03 Harvest Control Rule.

**Add Section 54.00, et seq.** This proposed series of regulations serves to implement the California Spiny Lobster FMP, as follows:

**Section 54.00 - Purpose and Scope.** This section clarifies the purpose of this article consistent with the objectives and goals of the MLMA. It also states that this article together with other applicable state and federal laws and regulations will govern the spiny lobster fisheries. **The last two sentences of subsection (b) have been removed as they were duplicative, unnecessary and unclear.**

**Section 54.01 - Definitions.** This section provides definitions that are specific to this new article. All definitions in this section are based on and are consistent with the



definitions found in the California Spiny Lobster FMP. The definitions are also consistent with other provisions of state and federal laws. **Elements of the California Spiny Lobster FMP will be applied or enforced as a result of these new regulations, and therefore must be incorporated by reference.**

**Section 54.02 - Management Process and Timing.** This section states that the management of the spiny lobster fisheries would conform to the California Spiny Lobster FMP and applicable California law. The Department will monitor the condition of the fisheries and the spiny lobster population and provide reports and recommendations as needed.

**Section 54.03 - Harvest Control Rule.** This section serves to outline the proposed management actions presented in the California Spiny Lobster FMP. This section also provides other management and conservation measures that may be considered by the Commission for implementation at a later date, consistent with the goals and objectives of the California Spiny Lobster FMP. The California Spiny Lobster FMP prescribes a Harvest Control Rule (HCR) as the primary management tool for the spiny fisheries. The HCR contains: 1) a set of three threshold reference points, 2) a HCR matrix, and 3) a control rule toolbox of conservation and management measures. Descriptions of the three components of the HCR are provided below.

1. Threshold reference points are the trigger points for potential management actions. The three threshold reference points in the California Spiny Lobster FMP are based on the commercial lobster season catch (**i.e., multi-year running average of catch** in weight), CPUE, and SPR. Each threshold reference point is designed to gauge a particular aspect of the commercial fishery and set at a **reference** level that, if crossed, would be indicative of changes within the commercial fishery or spiny lobster resource that may require management action.
2. The HCR matrix is the tool prescribed by the California Spiny Lobster FMP to guide the interpretation of the status of the spiny lobster stock at any given time based on the status of the three threshold reference points (e.g., Catch, CPUE and SPR).
3. The eight conservation and management measures within the control rule toolbox of the California Spiny Lobster FMP were developed with input from the LAC and each have been utilized to manage lobster fisheries around the world. Several tools, such as a minimum size limit, are already used in California. The eight conservation and management measures are: change the commercial trap limit, change the recreational bag limit, implement a total allowable catch (TAC), fishing district closures, change season length, change minimum size limit, impose a maximum size limit, and implement a sex-selective fishery. These tools have been analyzed by Department staff and vetted with the public and constituents during the LAC process.

The HCR is designed to provide spiny lobster fisheries management with a proactive and coherent framework. The status of the spiny lobster fisheries would be assessed using predetermined metrics and interpretations, and management responses will be derived from the previously vetted conservation and management measures.

**New subsection 54.03(c) previously made reference to a toolbox in Section 50.03(a), which has been corrected to say subsection 54.03(a).**

### **3) Proposed Commercial Amendments**

#### **Amend Section 121 Title 14, CCR; Lobster, Spiny. Possession during Closed Season**

##### **Proposed Changes**

Current regulations in Section 121 provide provisions for the possession of spiny lobsters during the closed season. Current FGC Section 8251 sets the commercial fishing season for taking spiny lobster and provides provisions for baiting commercial traps in advance of the commencement of the commercial season. Section 121 will be amended by adding language currently found in FGC 8251 to new subsection 121(a), which defines the start and end of the commercial spiny lobster season as between the first Wednesday in October and the first Wednesday after March 15. Provisions of FGC 8251 on when commercial traps can be baited are added to new Section 122.2 and described in that section. Existing regulations in Section 121 relating to the possession of spiny lobster during the closed season will be lettered 121(b) and the title of Section 121 will be amended to read: Lobster, Spiny. Open Season and Possession during Closed Season.

##### **Necessity and Rationale**

FGC Section 7078 gives the Commission authority to adopt regulations to implement an FMP and to list FGC sections that are made inoperative as to the particular fishery covered by the FMP. One of the conservation and management options in the HCR in the California Spiny Lobster FMP is a change to the commercial fishing season. In order for the Commission to make future regulatory changes to the season length as contemplated by the California Spiny Lobster FMP, the commercial fishing season as described in FGC Section 8251 is moved into Title 14, Section 121. FGC Section 8251 will be made inoperative as listed in the California Spiny Lobster FMP and these proposed regulations adopted by the Commission according to the process described in FGC sections 7078 and 7088.

#### **Amend and add new Subsections to Section 121.5, Title 14, CCR; Lobster, Spiny. Minimum Size and Verification**

##### **Proposed Changes**

Current regulations in this section describe the conditions that spiny lobsters are to be maintained in so that the minimum size of spiny lobsters as described in FGC 8252 can be verified. Current FGC Section 8252 sets the commercial minimum size for spiny

lobsters at 3.25 inches in length, describes how the measurement is to be taken, requires the possession of a measuring device, and the immediate release of undersized lobsters. Section 121.5 will be renamed: "Lobster, Spiny. Minimum Size and Verification. Current subsections (a) and (b) will be re-lettered (c) and (d), respectively, with minor, non-substantive changes to clarify the existing regulations. This includes the addition of the term "fixed caliper" to the requirement of possessing a measuring device in subsection 121.5(b) to clarify the type of measuring device that must be possessed. New language is added from FGC Section 8252 to new subsection 121.5(a) that defines the minimum size and new subsection 121.5(b) that defines how spiny lobsters are to be measured and how a trap shall be serviced prior to any additional trap being brought aboard a vessel.

#### **Necessity and Rationale**

Limiting a fisherman to having a maximum of one trap that has not been serviced aboard a vessel before pulling another trap helps ensure that any undersized lobster contained in the trap are measured and returned to the water in a timely manner.

#### **Option to add Subsection 121.5(e) linked to option 29.90(f)**

At its June 2016 meeting, the Commission chose not to pursue this option, so it has been removed.

#### **Necessity and Rationale**

~~Section 7078 of the FGC gives the Commission the authority to adopt regulations to implement an FMP and Section 7088 of the FGC provides that each FMP list any FGC sections that are made inoperative as to the particular fishery covered by the FMP. One of the management options in the California Spiny Lobster FMP Harvest Control Rule is a change to the minimum size of spiny lobsters that can be taken in the commercial fishery. Currently, the minimum size is set in the FGC. In order for the Commission to make future regulatory changes to the minimum size as contemplated by the FMP, the commercial minimum size limit as described in FGC Section 8252 is moved into Section 121.5, Title 14, CCR. Section 121.5(e) will be added to support the enforceability of the proposed regulation (Title 14, Section 29.90(f)) which will require the hole punching or tail clipping of recreationally caught lobster to address the issue of illegal commercialization of recreationally caught lobster. LED staff feels this regulation is necessary to enforce the marking provision proposed for the recreational fishery. Section 8252 of the FGC will be made inoperative, as listed in the California Spiny Lobster FMP, and the proposed new regulations Section 121.5 will be adopted by the Commission according to the process described in FGC Sections 7078 and 7088.~~

#### **Amend and add new Subsections to Section 122, Title 14, CCR; Lobster, Spiny. Permits to Take.**

To improve the organization and clarity of commercial regulations pertaining to the commercial take of spiny lobster, the proposed changes groups the subsections contained in Section 122 by similar regulation subject (Table 1) as well as amend and

add new regulations to provide additional information and/or clarification. Some subsections in Sections 122 that regulate the marking of traps and buoys and pulling of traps will be amended and moved to new sections 122.1 and 122.2, respectively. To reflect the proposed reorganization, Section 122 is to be renamed "Spiny Lobster Permits and Restricted Areas." Changes to Section 122 are described below.

Table 1. Summary of proposed relocation of existing subsections within Section 122.

| CURRENT SUBSECTION NUMBER | REGULATION SUBJECT                         | PROPOSED SUBSECTION NUMBER                             |
|---------------------------|--------------------------------------------|--------------------------------------------------------|
| 122(a)                    | Classes of Lobster Permits                 | No change                                              |
| 122(b)                    | Permit Renewal                             | No change                                              |
| 122(c)                    | Permit Transfers, Procedures, and Timeline | No change                                              |
| 122(d)                    | Permit Renewal                             | Move to 122(b)(2)                                      |
| 122(e)                    | Permit Renewal                             | Move to 122(b)(2)                                      |
| 122(f)                    | Permit Renewal                             | Move to 122(b)(4)                                      |
| 122(g)                    | General                                    | Move to new 122(h)                                     |
| 122(h)                    | General                                    | Proposed to be repealed*                               |
| 122(i)                    | Pulling Lobster Traps                      | Move to 122.2(a)                                       |
| 122(j)                    | Lobster Buoys and Trap Tags                | Move to 122.1(a)                                       |
| 122(k)                    | Lobster Buoys and Trap Tags                | Move to 122.1(b)                                       |
| 122(l)                    | Pulling another permit holders traps       | <u>Delete and replace with new</u> Moved to 122.2(h)** |
| 122(m)                    | Pulling Lobster Traps                      | Move to 122.2(g)                                       |
| 122(n)                    | Pulling Lobster Traps                      | Move to 122.2(b)(4)                                    |
| 122(o)                    | Restricted Fishing Areas                   | New 122(d)                                             |
| 122(p)                    | General                                    | New 122(e)                                             |
| 122(q)                    | General                                    | New 122(f)                                             |
| 122(r)                    | Permit Transfers, Procedures, and Timeline | Move to 122(c)                                         |

\* Subsection 122(h) will be repealed from the regulations as certain sections of the FGC applicable to lobster will become inoperative with the adoption of the California Spiny Lobster Fishery Management Plan and the proposed regulatory package.

\*\* Section 122(l) The current requirement for servicing another fisherman's trap is proposed to be moved to 122.2(h) and replaced for the 2017/18 lobster season by a new subsection 122.2(h)(2) and a formal Department waiver process proposed under Section 122.2(h)(2) of this regulatory package.

#### Amend Subsection 122(a), Title 14, CCR; Classes of Lobster Permit.

### **Proposed Changes**

Currently, Section 122(a) describes take of spiny lobster as authorized under the three classes of spiny lobster permits in the commercial fishery: transferable lobster operator permit, non-transferable lobster operator permit, and lobster crewmember permit. The proposed amendments to paragraph (3) of Subsection 122(a) will clarify that any licensed commercial fisherman that does not possess a valid transferable or non-transferable lobster operator permit may purchase a lobster crewmember permit that will allow him or her to accompany and assist the lobster operator permit holder in the take of spiny lobster. In addition, minor modifications are proposed in paragraph (4) of Subsection 122(a) for clarity and consistency with terminology used in paragraph (1) of Subsection 122(a).

### **Necessity and Rationale**

The proposed amendments are minor, non-substantive changes that would provide clarity and consistency of the existing regulations.

### **Amend Subsection 122(b), Title 14, CCR; Permit Renewal.**

#### **Proposed Changes**

Currently, regulations pertaining to permit renewal are contained in various subsections under Section 122. To improve the logical organization of these regulations, amended Section 122(b) will be entitled "Permit Renewal." Current subsections 122(b) will be renumbered as paragraph (1) of subsection 122(b), and 122(d) and (e) are proposed to be consolidated into paragraph (2) of subsection 122(b). In addition, the proposed regulatory amendment will include a new provision (subsection 122(b)(3)) allowing the issuance of no more than two lobster operator permits to a licensed commercial fisherman; this new provision will bring this section into conformance with the new trap limit program (further detailed below in the new Section 122.1). Current requirements described in subsection 122(f) that outline the procedures and deadline for permit renewal will also be moved to Section 122(b) and renumbered as paragraph (4) under this subsection 122(b)(4).

**By moving the rulemaking's effective date to April 1, 2017, reference to "beginning with the 2017-2018 lobster season" is no longer applicable; subsection 122(b)(3) has therefore been amended.**

#### **Necessity and Rationale**

The proposed grouping and relocation of existing subsections by regulation subject are non-substantive changes to improve organization and clarity of the regulations. The addition of subsection 122(b)(3) is necessary to create consistency between existing and new regulations for the trap limit proposed as part of this regulatory package.

**The overlap with FGC in subsection 122(b)(4) is necessary to help clarify the process for an appeal; the "show cause" language is consistent with the appellant bearing the burden of persuasion as stated in case law. See**

McDonough v. Goodcell, 13 Cal.2d 741; McDonough v. Garrison, 68 Cal.App.2d 318; Hansen v. State Board of Equalization, 43 Cal.App.2d 176; San Diego Cotton Club v. State Board of Equalization, 139 Cal.App. 655; Glick v. Scudder, 69 Cal.App.2d 717; and Martin v. Alcoholic Bev. Etc. Appeals Bd., 52 Cal.2d 259.

**Amend Subsection 122(c), Title 14, CCR; Permit Transfer, Procedures, and Timeline.**

**Proposed Changes**

New subsection 122(c) is proposed, entitled "Permit Transfers, Procedures, and Timelines." Proposed changes to this subsection are summarized below.

Current subsection 122(c), which requires notice of a permit transfer, will be renumbered as paragraph (1) under new subsection 122(c) with minor amendments to the regulatory text in which "Fish and Game Commission" is replaced with "commission."

Current subsection 122(r)(1) will be amended and renumbered as paragraph (2) under subsection 122(c). Subsection 122(r)(1) currently allows for the transfer of a transferable lobster operator permit by a permit holder provided that an application in the form of a notarized letter is submitted to the Department and the nonrefundable transfer fee **specified in Section 705** is paid. Under the proposed amendment, a permit holder will be required to submit a notarized transfer application (DFW 1702) (New 2/2016) with the nonrefundable transfer fee to the Department in order to transfer his or her permit to another licensed commercial fisherman. **The permit holder would also be required to transfer all trap tags in his/her possession along with the permit.** The transfer will be effective upon approval of the application by the Department. In addition, the proposed amendment includes a new provision subsection (122(c)(2)(A)) that, ~~beginning with the 2017-2018 permit year,~~ if the lobster operator permit is transferred to a person with a valid transferable lobster operator permit and a non-transferable lobster operator permit, the non-transferable lobster operator permit becomes null and void and must be surrendered to the Department. This new requirement is consistent with the proposed provision of subsection 122(b)(3), in that a licensed commercial fisherman will not be issued more than two lobster operator permits.

Proposed new regulation (3) under subsection 122(c) is a new requirement that delays the transfer of a lobster operator permit when the permit holder is facing pending violations that could affect the status of the permit; this will prevent a permit from being transferred in an effort to avoid a suspension or revocation of a permit.

Current subsection 122(r)(2) will be amended and renumbered as new paragraph (4) under subsection 122(c). Currently, the estate of a transferable lobster operator permit holder may transfer that permit no later than one year from the death of the permit holder (subsection 122(r)(2)). The proposed amendment will extend the deadline for the estate to apply to transfer a transferable permit from one to two years.

Current subsection 122(r)(3) will be amended and renumbered as new paragraph (5) under subsection 122(c). Currently, a non-transferable permit becomes null and void upon the death of the individual to whom the permit was issued (subsection 122(r)(3)). The proposed amendment will add a requirement that requires the estate to immediately surrender the permit, including any Department issued trap tags to the Department after the death of the permit holder.

Proposed new regulation (6) under subsection 122(c) adds appeal provisions for permit transfers. Under existing regulations, no appeal provisions for denial of a transfer are specified. Under this new requirement, any applicant who is denied transfer of a transferable lobster permit may appeal the denial in writing to the Commission within 60 days of the date of the Department's decision.

**By moving the rulemaking's effective date to April 1, 2017, references to "beginning with the 2017-2018 lobster season" is no longer applicable; subsection 122(c)(2)(A), 122(c)(4) and 122(c)(5) have therefore been amended.**

#### **Necessity and Rationale**

The proposed grouping and relocation of existing regulations by subject are non-substantive changes to improve organization and clarity. The amendments also include new permit transfer procedures and deadlines to improve the administration and management of permits within the commercial lobster fishery. The limited-entry nature of the commercial lobster fishery restricts the number of commercial participants. As such, the amendments will clarify the eligibility requirements and procedures in which the Department will authorize the transfer of a lobster operator permit to allow new permit holders to participate in the fishery.

Subsection ~~122(c)(3)~~ **122(c)(2)** is amended to standardize requirements for transfer of Lobster Operator Permits. The proposed regulation requires a notarized transfer application to formalize the transfer process and collect accurate information from the permit holder and the proposed permit holder in the place of a notarized letter for each transfer. **This subsection also clarifies that if the Department approves a transfer application, the lobster operator permit holder requesting the transfer will transfer the Department issued trap tags to the new permit holder to complete the transfer.**

Subsection 122(c)(2)(**A**) is proposed for added clarity in cases where a fisherman may be in possession of multiple lobster operator permits of different classes. When a lobster operator permit holder holds two permits, the proposed regulation clarifies that if a fisherman holds a non-transferable and a transferable lobster operator permit, the transfer of a second transferable permit to that fisherman would render the non-transferable permit null and void. This would require the permit holder to surrender the nontransferable permit and tags to the Department. This proposal is consistent with other regulations proposed as part of this regulatory package, including subsection 122(b)(3) and Section 122.1 (trap limit program).

In addition, to clarifying transfer procedures, the proposed amendment includes a new process (subsection 122(c)(6)) as a means for applicants to appeal the denial of a permit transfer if applicants do not agree with a decision made by the Department. Regulations for other fisheries have appeal provisions if a transfer of a permit is denied by the Department.

In the case of a lobster operator permit holder's death (subsection 122(c)(4) transferable permits and subsection 122(c)(5) non-transferable permits), the amendments require the estate to temporarily relinquish or surrender, respectively, the permit and trap tags ~~(beginning with the 2017-18 lobster season)~~ to the Department and extends the deadline for the estate to apply for a transfer of a transferable lobster permit. This amendment is necessary ~~because it is unlawful for the estate to fish the permit and therefore is required to surrender the permit to the Department to protect the permit as an estate asset and to ensure an orderly and sustainable restricted access fishery (see FGC Section 7082(b)).~~ The personal representative of the estate is charged with managing the estate assets with the care of a prudent person dealing with someone else's property; this means that the representative must be cautious and may not make any speculative investments (see Probate Code Section 8404 and Judicial Council Form DE-147). Allowing the permit to be fished by an unauthorized individual would be illegal and make the permit subject to subsequent suspension or revocation. The amendment prevents a permit from being fished until a transfer application has been submitted by the estate and approved by the Department. Under 122(c)(4) the Department would retain physical possession of the permit and work with the estate to ensure that fees are paid so that the permit remains valid until a transfer application is submitted, and it will allow The amendment also allows more time for the estate to transfer a transferable permit after the death of the permit holder. Should probate delay an estate from filing an application within two years, Section 122(c)(6) allows any applicant who is denied a transfer to appeal the denial to the Commission; in this regard, The ~~the~~ proposed regulations are consistent with current regulations for southern rock crab trap permits ~~with, for~~ which the estate is allowed two years from the date of the permit holder's death to transfer the permit to another commercial fisherman (Title 14 Section 125(e)(4)).

#### **Add New Subsection 122(d), Title 14, CCR; Restricted Fishing Areas.**

##### **Proposed Changes**

As discussed above, several regulations contained in Section 122 are relocated and grouped by related subject to improve clarity and enforceability. As such, subsection 122(o) describing closed areas around harbors is amended as new subsection 122(d) with amendments to the descriptions of the restricted fishing areas. Current regulations in subsection 122(o)(2)(A), subsection 122(o)(2)(B), and subsection 122(o)(2)(C) within Title 14 will be amended by replacing current descriptions of restricted commercial fishing area boundaries with latitude and longitude coordinates that can be easily referenced and plotted using GPS. Currently, restricted



fishing area boundaries for Newport Bay, Dana Point Harbor, and Oceanside Harbor are defined by landmarks, navigational markers, and compass headings. The proposed regulations will provide clarity and improved spatial resolution for these boundaries using latitude and longitude coordinates.

### **Necessity and Rationale**

This amendment is necessary to modernize the descriptions and provide for added clarity and enforcement. Many of the spatially referenced regulations currently found in Title 14 were created prior to GPS technology being readily available to the public. This resulted in general landmark locations and compass headings being the primary tool used to define spatially referenced regulations, which can sometimes result in regulations that are unclear and open to interpretation. For regulations that define restricted fishing areas (e.g., marine protected areas), it is important to have well defined and clear boundaries that can be easily interpreted and visualized. GPS technology provides this means and updating restricted fishing areas to latitude and longitude coordinates will greatly improve the understanding of these spatially referenced regulations. In addition, the current regulations do not accurately describe the restricted fishing area boundaries for Dana Point Harbor and Oceanside Harbor due to changes in the current locations of buoys and markers referenced in the regulations (Figure 3). For Dana Point Harbor, the eastern boundary of the restricted commercial fishing area will be extended to the current location of red buoy "4" as described in the current regulations. It is important to note that new charts list this buoy as red buoy "2". For Oceanside Harbor, the southeastern boundary of the commercial fishing restricted area will be extended to adjust for an incorrect compass heading used to define the southeastern boundary line. This heading results in a boundary that does extend completely to the southern jetty as described in the current regulation. This amendment will correct these minor boundary discrepancies and provide coordinates that can aid commercial fishing and navigational activities.

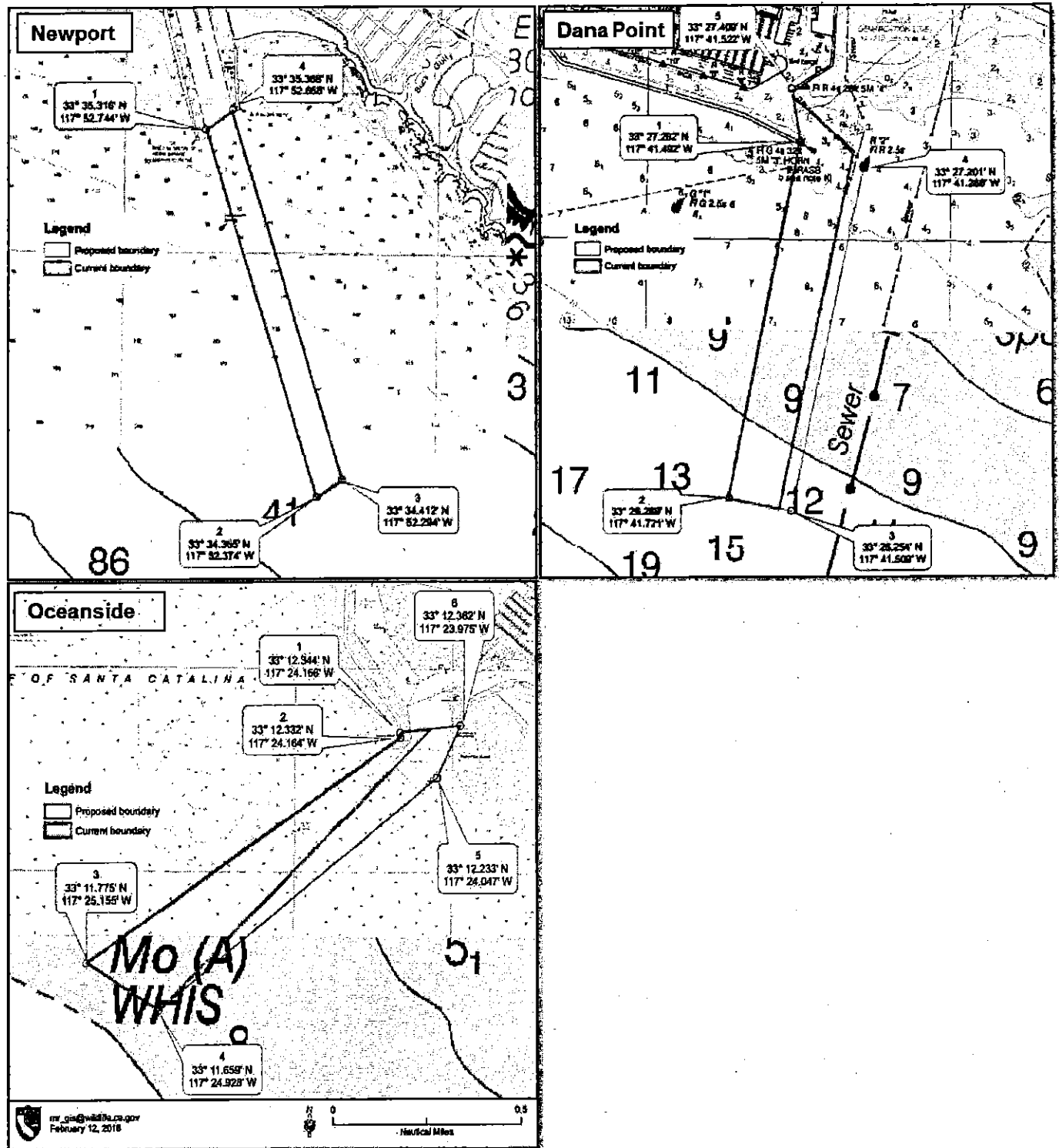


Figure 3. Proposed boundary modifications to restricted commercial fishing areas around Newport Bay, Dana Point, and Oceanside Harbor. The blue boundary lines represent the current boundaries defined by the regulations and the red boundary lines represent the proposed boundaries.

## **Amend Subsection 122(e), Title 14, CCR; Records.**

### **Proposed Changes**

Currently, any person who owns and/or operates any vessel used to take lobster must complete and submit an accurate record of all lobster fishing activities on a form (Daily Lobster Log, DFG 122) provided by the Department (Subsection 122(p)). As indicated in Table 1, current 122(p) is proposed to be re-lettered 122(e) as part of the restructuring of section 122. Additionally, an update to the format of the Daily Lobster Log (DFG 122 (7/96)), as referenced in the current regulation, is proposed to improve the collection of fishery-dependent data. The updated Daily Lobster Log (Rev. 03/04/16) is incorporated by reference into proposed subsection 122(e). Daily Lobster Log DFG 122 (7/96) differs from DFW 122 (Rev. 03/04/16) as follows:

1. Form contents have been updated to replace all instances of "Department of Fish and Game" with "Department of Fish and Wildlife" so that the form reflects the Department's name change, effective January 1, 2013, pursuant to Assembly Bill 2402.
2. The "Daily Lobster Fishing Log" page has been retitled "Daily Lobster Log" and the "Notice to Individuals" section of this page has been changed to "Notice to Permittees" to be consistent with language used in the daily lobster log form and the regulations.
3. Form notices were updated to include the Regional Manager of the Marine Region as the official for maintaining the daily lobster log information and FGC Section 8022 disclosure statement.
4. The "Southern California Fisheries Chart" map elements has been updated to include scale bars, delineation of U.S. and Mexican waters, map borders with latitude and longitude marks, and acknowledgements and notes to improve the presentation of spatial information.
5. Form instructions were updated to include new Department mailing address to return completed forms, additional definitions and instructions for new fields to ensure the consistency of the information recorded, and to improve the clarity of existing instructions.
6. The updated log page will now have only two fishing activity sections per page due to changes in the page layout to accommodate new fields. The important instructions are updated to reflect the reduction in activity sections.
7. The updated log page will now require the reporting of geographic coordinates ("LATITUDE" and "LONGITUDE") for "TRAP LOCATIONS," which will replace "NEAREST LANDMARK." New fields have been added to record the numerical value for latitude and longitude in degree and decimal minutes.
8. The updated log page will also provide two additional spaces (four spaces total) to record corresponding "LANDING RECEIPT NUMBER(S)" for each fishing activity section.

9. A new field named "# OF TRAPS CURRENTLY DEPLOYED" has been added to the log page under the "DATE TRAPS PULLED" section, which will require the reporting of number of traps currently deployed or fished.

Updated instructions that explain when and how logs are to be filled out, as well as when the logs are to be turned in to the Department, will accompany the form.

#### **Necessity and Rationale**

Currently, the reporting of landmarks for trap locations on the existing Daily Lobster Log form is not useful for management as the name and size of area for a particular landmark can vary from fisherman to fisherman. The proposed requirement of recording the geographic coordinates for a string or group of traps would modernize the location reporting requirement, be more consistent, and improve the Department's spatial understanding of fishing practices. Better spatial information on fishing practices will also be useful for informing gear recovery programs, identifying potential conflicts within the marine environment and for informing the issue of marine mammal gear interactions.

Increasing the number of spaces for fishermen to record landing receipt numbers would provide additional data to help the Department quantify the average weight of commercial lobsters landed. Average weight is a key input used to calculate the spawning potential ratio used to manage the fishery under the California Spiny Lobster FMP. Information on the number of lobsters caught and pounds landed come from two different sources. The number of legal size lobster retained by the commercial fishery is reported on the Daily Lobster Log and pounds landed reported on commercial landing receipts. Adding an additional space to record the landing receipt number associated with the catch on the Daily Lobster Log will improve correlation of these two data sources resulting in better estimates of the average weight of lobsters landed in the fishery.

The requirement to report of number of traps deployed will allow the estimation of number of traps fished at any one time during the season. This information is needed to estimate the number of traps used in the fishery and inform any future changes to the trap limit as contemplated in the California Spiny Lobster FMP. Overall, the proposed changes to update the format of the Daily Lobster Log will help improve Department fishery-dependent data collection, correlation of fishing logs and landing receipts, and overall assessment of the commercial fishery.

#### **Amend Subsection 122(f), Title 14, CCR; Logs Submittal Requirements for an Annual Permit.**

##### **Proposed Changes**

Current subsection 122(q), which requires a fisherman to submit his/her lobster logs in order to be eligible for a successive year annual permit is now under subsection 122(f).

##### **Necessity and Rationale**

This is a minor, non-substantive change in the numbering of subsections.

**Add new Subsection 122(g), Title 14, CCR; Allowing More Than One Operator Permit Holder to Operate from the Same Vessel and Liability.**

**Proposed Changes**

Current regulations do not explicitly prohibit more than one fisherman with a lobster operator permit from operating out of the same vessel at the same time. This regulation is being amended to clarify the provisions surrounding this activity. It states that if multiple lobster operator permit holders operate from the same vessel during the same trip, they may share joint liability for any potential violation arising out of their fishing activities.

In addition, the proposed regulation clarifies that each permittee whose traps are being pulled must be aboard the vessel.

**Necessity and Rationale**

Current regulations allow multiple lobster permittees to concurrently fish on the same vessel to maximize efficiency, and practical space limitations may require them to store their catch in a single hold. The fishermen each keep track of what they take, and the lobsters are then distributed prior to landing. Upon landing, the catch of each permittee is recorded on a landing receipt that identifies them and their permit, along with other relevant information (see FGC, Section 8043). Lobsters are a fungible commodity; there are no individual quotas in the fishery and how the catch is apportioned is not a fishery management concern. A permit allows the take and possession of lobster for commercial purposes. Fishermen may only take under the authority of their individual permits and, upon landing, must report their catch. The fishery is not subject to any restrictions on co-mingling aboard the vessel and in the absence of such restrictions, the fishermen may combine their catch prior to landing (see FGC, Section 8140).

However, effective fishery management also requires that persons be held accountable for the illegal take and possession of lobsters. Both lobster permit operators and lobster permit crewmembers exercise dominion and control over the lobsters taken and so may be held accountable for any illegal lobsters taken. Until distribution occurs, all permittees have constructive possession of the total catch and so remain jointly liable for any violations occurring during the take and possession of the total catch. Without the imposition of constructive possession it would be too easy to skirt the law by simply disclaiming ownership of any illegally taken lobster. "Constructive possession is deemed to exist when persons maintain control or a right to control contraband. Possession may be imputed when the contraband is found in a location which is immediately and exclusively accessible to the accused and subject to his dominion and control." (People v. Showers (1968) 68 Cal.2d 639). Here, this presumption of constructive possession is supported by the fact that the permittees are engaged in a highly regulated activity and are charged with knowledge of all the laws relating thereto.

**and that they are engaged in the same activity at the same time within the confines of a vessel.**

Current regulations do not define who is liable for fishing violations in situations where multiple lobster operator permit holders are fishing jointly on one vessel. This proposed addition would provide clarification for fishermen who operate from the same vessel and help them understand their responsibilities. The proposed regulation will minimize confusion regarding liabilities for fishing violations and improve enforcement surrounding this activity.

**Repeal Subsection 122(h), Title 14, CCR**

**Proposed Changes**

Currently, subsection 122(h) describes the responsibilities and conditions of each lobster operator permit holder their agents, servants, employees, or those acting under their direction or control to adhere to all of the provisions of the FGC and regulations of the Fish and Game Commission. This section is proposed for deletion from Section 122.

**Necessity and Rationale**

This regulation is redundant with FGC Section 12000 and unnecessary within Title 14 because as written it reiterates that all laws must be followed by permit holders and is a condition of the permits. FGC Section 12000 details that any violation of the Fish and Game Code or regulation adopted under the code, is a misdemeanor.

**Add new Subsection 122(h), Title 14, CCR; Permission to Carry SCUBA Gear on Commercial Vessels.**

**Proposed Changes**

Currently, no SCUBA equipment or other breathing device may be used to assist in the take of spiny lobster from a commercial lobster vessel (subsection 122(g)). Commercial harvest of spiny lobster is permitted only with the use of traps (subsection 122(a)(2)). The proposed new subsection 122(h) would replace current subsection 122(g) regulation and clarify that SCUBA equipment may be used for the purpose of locating and securing traps for retrieval. This new provision also specifies that lobsters contained in traps that had been secured using SCUBA may be possessed only after those traps have been serviced aboard the fishing vessel within the trap service interval requirement.

**Necessity and Rationale**

The proposed regulation is added to provide clarification on the use of SCUBA in the commercial fishery. This provision would allow SCUBA equipment to be kept onboard a commercial fishing vessel for the purpose of locating and securing traps only, and not to be used in the take of lobsters. This regulation will help to reduce gear loss by allowing fisherman to retrieve traps that would potentially be lost. In addition, this regulation will assist permit holders to retrieve the individual trap tags that are secured to these traps. Since the new trap tag program will limit the number of traps each fisherman can fish,

each trap tag will represent a unit of effort that cannot be replaced and there will be a greater incentive to recover trap tags.

#### **Add new Section 122.1, Title 14, CCR; Lobster Buoys and Trap Tags.**

##### **Proposed Regulation**

This new section will contain existing regulations on lobster buoys and a proposed new spiny lobster trap limit program. As discussed above, several existing regulations in Section 122 are proposed to be organized into new sections by similar subjects to improve clarity and enforceability. As such, current Section 122 regulations that explain buoy use (Section 122(j)) and describe proper identification markings on a buoy (Section 122(k)) will be moved to this section as subsection 122.1(a) and subsection 122.2(b), respectively. Minor additional modifications were made to the existing regulatory text of these proposed new subsections for clarity and consistency. The word "operator" was inadvertently omitted from the last sentence of 122.1(b) and has been added.

~~In addition, subsection 122.2(c)~~ Subsection 122.1(c) is added to this section to detail the proposed spiny lobster trap limit program, effective beginning with the 2017-2018 commercial spiny lobster season. The first two sentences of the originally proposed subsection 122.1(c) are combined to eliminate unnecessary verbiage and to clarify that a lobster trap must have attached a Department issued trap tag when possessed on or while on board a vessel or deployed, rather than on a dock or in a storage location. In addition, by moving the rulemaking's effective date to April 1, 2017, reference to "beginning with the 2017-2018 lobster season" is no longer applicable and has been removed. Subsection 122.1(c)(2), which required buoy tags, was not adopted by the Commission; it has been struck from the regulatory language and the following subsections renumbered accordingly. What were previously subsections 122.1(c)(3)(C) and 122.1(c)(3)(D), which are now subsections 122.1(c)(2)(C) and 122.1(c)(2)(D), have been amended to add clarity by addressing syntax issues. Proposed subsection 122.1(c)(2) relating to lobster buoy tags was not adopted by the Commission and has been removed from the regulatory language.

Currently, there is no regulation in place that limits the number of traps each commercial lobster fisherman may fish. The proposed regulations would create a trap limit program for the commercial spiny lobster fishery. Under this new program, a commercial fisherman that holds a valid lobster operator permit may fish up to 300 traps for each valid lobster operator permit in his or her possession. A commercial fisherman may hold up to two lobster operator permits allowing them to fish a maximum of 600 traps (300 for each permit). To implement this new trap limit program, each lobster trap deployed must be marked with a single Department issued trap tag and each trap buoy must be marked with a buoy tag that is supplied by the fisherman. The buoy tag must be legibly marked with the lobster operator permit number and the number that is listed on the trap tag that the buoy is marking.

Before the beginning of each fishing season, each lobster operator permittee will be issued 300 individually numbered trap tags for each valid lobster operator permit they possess. They Lobster operator permit holders will not receive any additional trap tags for that season unless they submit a signed "catastrophic loss" affidavit to the Department (proposed affidavit added to Section 705 of these regulations); this would allow for the in season replacement of trap tags lost due to a "catastrophic loss," which is defined as the cumulative loss by a lobster operator permit holder of 75 or more trap tags for each valid lobster operator permit due to such circumstances beyond the permit holder's control, such as weather, force majeure and acts of God. The affidavit will require the lobster operator permittee to provide details regarding the circumstances leading to the catastrophic loss event, dates the loss occurred, and the identification numbers of the lost trap tags. All affidavits need to be reviewed and approved by the Department before any replacement tags are issued. A nonrefundable fee will be charged for each replacement tag. Any trap tag reported as lost are null and void and if subsequently recovered during the season must be returned to the Department.

### Necessity and Rationale

Establishing a trap limit for the commercial spiny lobster fishery is one of the most important components of the California Spiny Lobster FMP implementing regulations. The trap limit provisions proposed by the LAC solution with input from the Department address an ongoing problem identified by fishery participants. As demonstrated above in Figure 2, the ex-vessel price per pound of spiny lobster has risen significantly in the past years while, at the same time, the number of total trap pulls that the fleet experienced each fishing season has also increased (Figure 4). Feedback from commercial fishermen suggests that the total number of traps that each fisherman uses is increasing as well. This escalation of trap usage is likely brought on by competition for fishing grounds and the externalization that continue to incentivize individuals to increase their respective trap numbers.

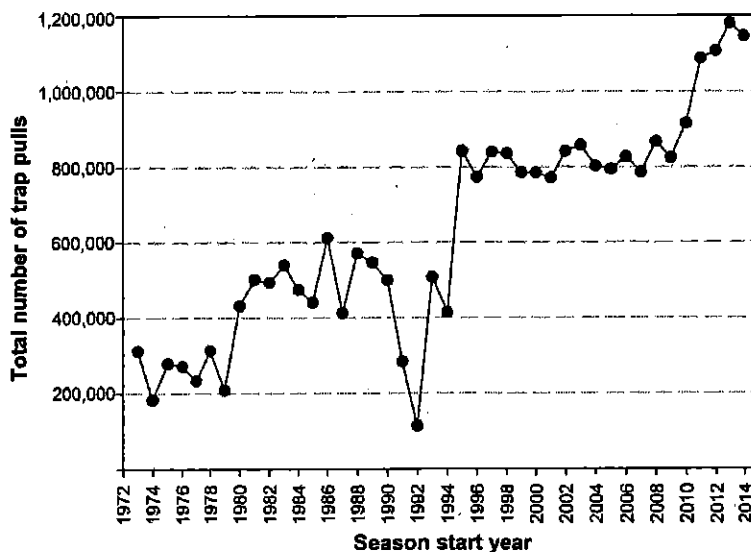




Figure 4. Total trap pulls recorded by the commercial spiny lobster fishery from 1973-2014 commercial fishing seasons.

The upward trend in the number of trap pulls in the fishery is unlikely to impact the biological sustainability of the spiny lobster stock itself due to other regulations currently in place. For example, all traps deployed by commercial fishermen are required to be outfitted with escape ports that allow small sub-legal sized individuals to escape and clips that are designed to dissolve overtime (destruction device). However, the reported rise in number of traps used in the fishery may impact other components of the ecosystem as well as increase the possibility of gear loss. More lost gear can, in turn, negatively impact the marine environment as well as the experience of those who enter that environment for recreational and other commercial purposes.

The escalating number of gear can also reduce the profitability of the commercial spiny lobster fishery. MLMA fishery management objectives include observing the long-term interest of people dependent on fishing for food, livelihood, or recreation" (FGC Section 7056(i)), and allowing fishery participants to propose methods to prevent or reduce excess effort in marine fisheries" (FGC Section 7056(e)). In 2013, the Department conducted the "California Department of Fish and Wildlife Commercial Lobster Survey" which targeted all holders of transferrable and non-transferrable lobster operator permits. The survey found that a majority of the respondents were in support of a trap limit. Of the 111 holders who responded, over 76 percent responded "yes" to the question, "Do you think there needs to be a trap limit?" Of the respondents who supported the trap limit, 48 percent wanted a trap limit of 300 or less and 34 percent wanted a trap limit of 350-400 traps. Of these respondents, 52 percent also expressed support for the ability to hold two permits to fish a maximum 600 traps while 67 percent did not support more than two permits.

Based on the responses to the 2013 survey, the LAC was asked to consider the development and implementation of a trap limit for the commercial sector. As a group, the LAC reached consensus on recommendations to establish a 300-trap limit for each lobster operator permit and implement the use of trap tags modelled generally after the Dungeness crab trap tag program. Under this new program, each commercial lobster fishermen will be required to properly affix a Department-issued trap tag to the lobster trap along with an identifying buoy tag, supplied by the lobster operator permit holder, affixed to the lobster trap buoy to verify the number of traps fished and aid enforcement. Trap tags also provide a method to identify and return lost traps to owners during the fishing season. Following the consensus recommendations from the LAC, the Department proposes regulatory amendments that will allow a licensed fisherman to possess a maximum of two lobster operator permits, and for each lobster operator permit held, the Department will issue 300 trap tags before the start of the fishing season. The possession of two lobster operator permits will allow a commercial fisherman to deploy a maximum of 600 traps. The 300-trap limit attached to each lobster operator permit applies to both transferrable and non-transferrable lobster operator permits. The establishment of a trap limit program and trap tag provisions will optimize and create a more orderly commercial fishery as well as provide improved understanding of the amount gear used in the fishery.

In addition, a catastrophic loss provision is proposed as part of the trap limit program, which will allow lobster operator permit holders to replace lost trap tags over a season. A catastrophic loss is defined as a loss of 75 or more traps with tags (25 percent or more loss) per permit, based on the LAC consensus recommendations. The catastrophic loss tags would be uniquely identifiable for enforcement purposes. This provision takes into consideration unusual or unforeseen circumstances that may be encountered during a season and help ensure that these circumstances do not pose an unfair hardship for fishermen to operate within their allotted number of traps.

**Under the proposed regulations, lobster operator permit holders will be required to submit a signed Lobster Operator Permit Catastrophic Lost Trap Affidavit to the Department (proposed DFW 1701 added to Section 705) and pay the applicable fees to receive replacement trap tags. Commercial fishing is a highly regulated activity involving the take of public trust resources. Effective administration, management, and enforcement of marine fisheries require accurate information about the resources and those who participate in their take. Penal Code 115 makes it a crime to knowingly file a forged document with a government office in the state. Fish and Game Code Section 1054 makes it unlawful to submit any false, inaccurate, or otherwise misleading information on any application presented to the Department for the purpose of obtaining a license or permit, and allows the Department to require such applicants to show proof of the statements or facts required for obtaining such license or permit. Requiring that the signature of the applicant be made under penalty of perjury helps minimize the potential for fraud.**

**Add new Section 122.2, et seq. Title 14, CCR; Pulling Lobster Traps.**

This new section 122.2 will specify (and therefore clarify) the pulling of traps for the take of spiny lobster. As discussed above, organizational changes affecting several Section 122 regulations are proposed to consolidate similar regulations in the same section and improve clarity and enforceability. Accordingly, the proposed changes would move current regulations that specify the time of day during which lobster traps shall not be pulled, raised, or placed in the water (subsection 122(i)), and provisions for which traps may be placed in the water before the opening of the spiny lobster season (subsection 122(n)), and disturbed or moved by Department employees (subsection 122(m)), ~~and servicing another fisherman's traps (subsection 122(l))~~ to this new section as subsection 122.2(a), subsection 122.2(b)(4), and subsection 122.2(g) ~~and subsection 122.2(h)~~, respectively. **Subsection 122(l) regarding servicing another fisherman's traps has been deleted and is replaced by a new 122.2(h).**

In addition, the proposed regulatory package would make existing FGC Section 8251 inoperative and language of that FGC section specifying that lobster traps may be set and baited 24 hours in advance of the spiny lobster season opening date is moved to this section as subsection 122.2(c). The current trap servicing requirement found in FGC Section 9004 that requires traps to be serviced every 96 hours (4 days) will be made inoperative and added to new subsection 122.2 (d)(4). ~~Subsection 122(d)(4)~~

~~will only be in effect for the 2016-2017 season and is proposed to be replaced by subsection 122.2(d)(2), while~~ extending the trap service requirement from 4 to 7 days. By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable and have been removed.

Minor additional modifications were made to the existing regulatory text of the proposed new subsections for clarity and consistency. For example, proposed subsection 122.2(g) will replace the wording of "shall" to "may" when referring to Department staff inspecting commercial fishing traps while on official duty. New regulatory proposals in this section are discussed further in the subsection summary below.

**Add new Subsection 122.2(b)(2), Title 14, CCR; Grace Period for Deploying and Retrieving Traps during the Closed Season.**

**Proposed Regulation**

The proposed regulation would provide a three-day extension to the current grace period for which fishermen have to deploy traps before the start of the commercial season and to retrieve traps after the commercial season ends. Under current regulations, legally marked lobster traps may be placed in the water not more than six days before the opening of the season and may remain in the water for not more than six days after the close of the season, provided that the traps are unbaited with doors wired open (subsection 122(n)). ~~Beginning with the 2017-2018 spiny lobster season, the~~ The proposed new subsection would allow fishermen to deploy their traps into the water nine days before the start of the season and nine days after the end of the season to retrieve traps and transport them back to shore. With the exception for the allowance of baiting traps 24 hours in advance of the start of the commercial season, any trap that is deployed before the season starts or is left in the water after the end of the season will still be required to be left unbaited and wired open.

By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable; subsection 122.2(b)(1) is therefore deleted, and what was previously 122.2(b)(2) has become 122.2(b).

**Necessity and Rationale**

The extended grace period will provide additional time for fishermen to transport their traps to their desired fishing locations. It was discussed during the LAC process that the current six-day allowance posed a safety issue, since fisherman are currently overloading their boats with traps during the pre-season deployment period. Another benefit to the fishery is that this extended time would allow fishermen extra time to transport their own traps to fishing location, since currently some fishermen pay others to transport their traps. Similarly, the grace period after a season's close only requires fishermen to clean out the bait jars from their deployed traps, and the physical traps can be retrieved and transported safely over a course of nine days. The proposed regulation would give fishermen three extra days to further buffer these margins of safety. The new regulation will retain the requirement of keeping the traps unbaited and

wired open during the grace periods. This requirement will continue to minimize the risk of unwanted bycatch and ghost fishing

**Add new Subsections 122.2(d)(1) and 122.2(d)(2), Title 14, CCR; Trap Service Requirement.**

**Proposed Regulation**

Currently ~~regulation in~~ FGC Section 9004 requires that fishermen raise, clean, service, and empty their lobster traps at time intervals not to exceed 96 hours (four days) and also provides fishermen with an exemption if weather conditions do not allow the fishermen to service their traps. The proposed regulations would make current FGC Section 9004 inoperative as it relates to lobster and ~~add the current service requirement of 96 hours to subsection 122.2(d)(1) to be effective for the 2016-2017 lobster season only. Beginning with the 2017-2018 lobster season,~~ subsection 122.2(d)(2) will ~~replace subsection 122.2(d)(1) and~~ extend the maximum allowable trap servicing requirement to 168 hours (7 days). No weather exemptions are provided in the proposed subsection 122.2(d)(2), which is consistent with federal regulations governing servicing of fixed gear (50 CFR Section 660.230(b)(3)).

**By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable; previously proposed subsection 122.2(d)(1) has been deleted and what was previously 122.2(d)(2) has become 122.2(d).**

**Necessity and Rationale**

The proposed regulation would extend the allowable trap servicing requirement to seven days. The proposed longer servicing requirement originated from the LAC process to provide fishermen with more discretion to selectively service their traps based on prevailing weather conditions and economic incentives. In addition, the current four-day service requirement does not supply some fishermen with enough time to service all of their traps. The seven-day servicing requirement is also in line with the federal regulation controlling the maximum servicing requirement for fixed gears in federal water (50 CFR Section 660.230(b)(3)), which does not provide specific or general weather exemptions. **The requirement for fishermen to clean, service and empty their traps is described below.**

**Cleaned**

**When lobster traps are pulled from the seafloor, they are often covered with seaweed or other debris; this material could potentially defeat important destruction devices/panels and escape ports. Cleaning the trap of accumulated material helps for these measures to function properly every time it is pulled within the required time frame.**

**Serviced**

**Lobster traps also have a lot of mechanisms (construction) that allow them to work properly. A trap that has been damaged or corroded could potentially cause escape measures to not work properly, or there could be damage to the line, etc.**

that could lead to the trap breaking off and becoming lost. The requirement to service the trap ensures that the trap is returned to the water in a condition where the escape measures and security of the trap are ensured each time it is pulled within the required time frame, consistent with Fish and Game Code sections 9003 and 9010.

#### Emptied

The requirement to empty a lobster trap is to ensure that all lobsters and other animals are removed from the trap (to avoid leaving undersized or female lobsters in the trap to attract other lobsters and to minimize bycatch mortality).

#### Add New Subsection 122.2(e), Title 14, CCR; Abandoned Traps.

##### **Proposed Regulation**

The proposed regulation specifies that it is unlawful to abandon lobster traps in the waters of the state. A trap will be considered abandoned if it is not retrieved 14 days after the close of the commercial spiny lobster season. ~~The regulation further specifies that from 15 days after the close of the season through September 15, an unlimited number of lobster traps may be retrieved by a lobster operator permit holder or a Department designee and transported to shore. Previously the last sentence of this subsection identified the time period after the end of a season when a lobster operator permit holder or a Department designee could pull and transport an unlimited number of abandoned traps of another lobster operator permit holder. This language more appropriately belongs under the exceptions provided in subsection 122.2(i) that is now proposed to become subsection 122.2(h).~~

##### **Necessity and Rationale**

Current regulations do not define when a trap is considered abandoned. The proposed regulation will provide clarification for identifying abandoned traps in state waters. ~~The regulation would also serve to help reduce the potential impact of abandoned fishing gear on living marine resources and underwater habitat and may help inform future lost gear recovery programs.~~

#### Add New Subsection 122.2(f), Title 14, CCR; Trap Loss Affidavit.

##### **Proposed Regulation**

~~Beginning with the 2017-2018 spiny lobster season, the~~ The proposed subsection would require each fisherman who holds a lobster operator permit to submit to the Department by April 15 an end of the season trap loss affidavit (DFW 1020, New 2/18/2016) for each permit he/she holds at the end of each season. The provision provides that if a permit is transferred during the season, only the fisherman who is in possession of that lobster operator permit at the end of the season is required to submit the form, and that all trap tags shall be retained by each lobster operator permit holder until the beginning of the next lobster season.

By moving the rulemaking's effective date to April 1, 2017, reference to "beginning with the 2017-2018 lobster season" is no longer applicable.

#### **Necessity and Rationale**

The proposed regulation is part of the proposed trap tag program for the commercial spiny lobster fishery, ~~effective beginning with the 2017-2018 spiny lobster season.~~ The proposed regulation will provide needed essential fisheries information (FGC Section ~~9493~~) to estimate trap loss in the fishery to inform future management decisions and help fishermen account for the number of Department trap tags issued and lost during a season. The proposed change will also aid lost gear recovery programs by providing information on gear loss.

#### **Add New Subsection 122.2(g), Title 14, CCR; Department Inspection of Traps for Compliance.**

##### **Proposed Regulation**

Under current regulations (subsection 122(m)), the Department has authority to inspect lobster traps for compliance. Current subsection 122(m) is now proposed as subsection 122.2(g), with a modification to the original regulatory text from Department employees "...shall inspect any lobster trap..." to "...may inspect any lobster trap."

##### **Necessity and Rationale**

In the authority given to the Department to inspect lobster traps for compliance, the word "shall" was changed to "may" in an effort to give the Department discretion in determining if a lobster trap should be inspected for compliance. If the word "shall" was not changed to "may", the Department would not have discretion and would have to pull every lobster trap encountered on the water; this is not reasonable and would curtail general patrol efforts, leaving patrol vessels unable to conduct effective and efficient patrols.

#### **Add New Subsection 122.2(h), Title 14, CCR; Allowing the Retrieval of Lost, Damaged, or Abandoned Traps.**

##### **Proposed Regulation**

By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable and previously proposed subsection 122.2(h) has been removed.

#### **Add New Subsection ~~122.2(h)(1)~~ 122.2(h)(1), Title 14, CCR; Allowing the Retrieval of Lost, Damaged, or Abandoned Traps.**

##### **Proposed Regulation**

Under current regulations, fishermen are prohibited from possessing and retrieving lobster traps other than their own unless they have written permission from the lobster operator permit holder. This regulatory proposal would allow a lobster operator permit

holder to retrieve lost, damaged, ~~or abandoned~~, or otherwise derelict lobster traps of another lobster permit holder without written permission or a waiver (**new subsection 122.2(h)(1)**). The regulatory language is mirrored after existing language for the Dungeness crab fishery. Fishermen are limited to retrieving up to six derelict lobster traps per trip during the spiny lobster season unless a waiver is granted by the Department (as described in new subsection ~~422.2(i)(2)~~122.2(h)(2) below). The time, location, number of traps retrieved, and the trap tag information must be recorded in the retrieving vessel's log. Any lobster caught in the retrieved traps cannot be retained and must be returned to the ocean immediately.

**By moving the rulemaking's effective date to April 1, 2017, reference to "beginning with the 2017-2018 lobster season" is no longer applicable and has been removed.**

### **Necessity and Rationale**

The proposed provisions accommodate instances when it is necessary to retrieve lost, damaged, abandoned, or otherwise derelict traps during the season to help reduce potential impact of fishing gear on living marine resources and underwater habitat. The proposed regulations will also help the Department collect data on trap loss to support fisheries conservation and management.

**As a result of clean up to the language in new subsection 122.2(h)(2), additional proposed revisions to this subsection maintain a parallel structure between the two subsections.**

**Add New Subsection ~~422.2(i)(2)~~122.2(h)(2), Title 14, CCR: Waiver Allowing One Commercial Fisherman to Service the Trap of Another.**

### **Proposed Regulation**

Under the current regulation, a fisherman with a valid lobster operator permit may pull and service the traps of a non-present fisherman, provided that the fisherman pulling the trap (i.e., retriever) possesses written permission from the trap owner explicitly allowing the retriever to pull the trap. This written permission or "note" process provides fishermen with a mechanism to satisfy the existing trap servicing limit, comply with season length limit, or prevent gear loss in the event of unforeseen circumstances (e.g., illness or engine breakdown).

The proposed regulation will formalize the current "note" process under this subsection by requiring fishermen to submit a waiver request to the Department. The fisherman applying for a waiver must describe the circumstances behind why having another lobster operator permit holder servicing his/her trap is necessary to prevent undue hardship. The waiver is not intended to lend or transfer the rights or privileges of a lobster operator permit to another fisherman, but to merely provide a mechanism to prevent undue complications in complying with the fishing regulations for circumstances beyond the control of the permit holder, such as vessel incapacitation. The Department may also disallow retrievers to retain any

**legal size lobster captured during the process of servicing or retrieving traps based on the circumstances of the waiver request.**

**Under proposed subsection 122.2(h)(2)(F), legal-size lobster caught in the retrieved traps may be retained by the fisherman retrieving the trap, unless otherwise specified as a condition of the waiver.** The Department may **also** attach **other** specific conditions to the waiver as is appropriate given the specific circumstances **(proposed subsection 122.2(h)(2)(C))**. For instance, once a retriever services a trap, he or she may potentially be required to transport the trap back to shore or redeploy the trap unbaited and wired open. ~~The Department may also disallow retrievers to retain any legal size lobster captured during the process of servicing or retrieving traps.~~ In either case, liability for any violation related to improperly redeployed traps will transfer to the fisherman that has the permission to pull the traps.

#### **Necessity and Rationale**

This provision is necessary to provide fishermen flexibility to respond to unforeseen circumstances to prevent undue hardship and comply with fishing regulations. The proposed regulation will provide clear rules **and procedures** for requesting a waiver to minimize public confusion and improve regulatory enforcement.

#### **Add New Subsection 122.2(h)(3), Title 14, CCR; Allowing the Retrieval of Abandoned Traps after the Lobster Season Ends**

##### **Proposed Regulation**

**Under current regulations, fishermen are prohibited from possessing and retrieving lobster traps other than their own unless they have written permission from the permit holder. Under proposed subsection 122.2(e) of this regulatory proposal, spiny lobster traps not retrieved 14 days after the close of the commercial lobster season will be considered abandoned. This regulation specifies that from 15 days after the close of the season through September 15, an unlimited number of lobster traps may be retrieved by a lobster operator permit holder or a Department designee and transported to shore.**

##### **Necessity and Rationale**

**This regulation accommodates instances when it is necessary to retrieve abandoned traps after the close of the spiny lobster season to help reduce the potential impact of fishing gear on living marine resources and underwater habitat. The proposed regulations may also help inform future abandoned and lost gear recovery programs.**

#### **Amend Section 705, Title 14, CCR; Commercial Fishing Applications, Permits, Tags and Fees**

##### **Proposed Changes**



**By moving the rulemaking's effective date to April 1, 2017, references to the 2016-2017 regulations are no longer applicable; reference to the 2016-2017 regulations and "beginning with the 2017-2018 lobster season" have been removed.**

This regulatory proposal will add multiple subsections to Section 705 of Title 14 related to commercial lobster operator permits and the new trap tag program. ~~Current lobster operator permit fees will be added to subsection 705(a)(T) and will only be in effect for the 2016-2017 season.~~ Fees related to "Lobster Operator Permit and Trap Tags" will be added to subsection 705(a)(8)(U)(T) ~~to become effective for the 2017-2018 season.~~ Currently, the fee for a lobster operator permit is established in FGC Section 8254(c). Section 8254(c) will become inoperative as part of the California Spiny Lobster FMP implementing regulations and permit fees moved into Title 14. Moving the lobster operator permit fee to Section 705 is necessary to incorporate the cost of 300 annual trap tags to the annual permit fee as part of the proposed trap limit ~~for the 2017-2018 lobster season.~~ A fee will also be established for each replacement tag requested when a permit holder suffers a catastrophic loss of at least 75 tags during a season.

The proposed regulations explicitly describe the trap limit and issuance procedures for permit holders to acquire trap tags, the costs of which are added to the existing lobster operator permit fee, and replacement tags from the Department. The proposed fees for the lobster operator permits and replacement trap tags due to catastrophic loss were set based on a fiscal analyses completed by the Department to recover costs incurred by the Department pursuant to FGC Section 1050 (attachment 2). The proposed regulations require that all lobster traps are properly tagged during the season to ensure that lobster operator permit holders are operating within the proposed trap limit of 300 traps.

Other changes include a new Lobster Operator Permit Transfer Application (DFW 1702), **Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit (DFW 1701), and End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW 1020).** **Each of the three forms will need to be reviewed and approved by the Department and require a signature "under penalty of perjury" that the information submitted is accurate; DFW 1702 must also be notarized.**

**Commercial fishing is a highly regulated activity involving the take of public trust resources. Effective administration, management, and enforcement of marine fisheries require accurate information about the resources and those who participate in their take. Penal Code Section 115 makes it a crime to knowingly file a forged document with a government office in the state. Fish and Game Code Section 1054 makes it unlawful to submit any false, inaccurate, or otherwise misleading information on any application or other document presented to the department for the purpose of obtaining a license, permit, tag or other entitlements and allows the Department to require such applicants to show proof of the statements or facts required for obtaining such license or permit. California Code of Civil Procedure Section 2015.5 provides that such statements**

or facts may be supported by an unsworn declaration in writing of such an applicant which recites that it is certified or declared to be true under penalty of perjury. By requiring such certification on its forms, the Department notifies the applicants of his/her legal duty while establishing his/her knowledge of such duty. Requiring that the signature of the applicant be notarized on DFW 1702 helps minimize the potential for fraud. (New 2/2016) for transferring a lobster operator permit is proposed for subsection 705(b)(1). The application replaces the notarized letter currently submitted by the permit holder who wants to transfer a lobster operator permit. Permit transfers are allowed under proposed subsection 122(c)(2). A Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit (DFW1701) (New 2/2016) is proposed for subsection 705(c)(4) and its associated trap tag replacement fees are proposed for subsection 705(c)(5). Regulations for submitting catastrophic trap tag loss claims are described in proposed new subsection 122.2(c)(3). An End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW1020) (New 02/18/16) is proposed for subsection 705(c)(6) as described in proposed subsection 122.2(f). Lobster operator permit holders are required to submit a report identifying the number of traps lost during the just concluded lobster season.

#### *Lobster Operator Permit Transfer Application (DFW 1702) (New 2/2016)*

This form is proposed under subsection 122(c)(2) and would be added to subsection 705(b)(1).

#### *Necessity and Rationale*

Under existing regulations, permit holders submit a notarized letter when a permit is being transferred to another licensed commercial fisherman. The application replaces the notarized letter currently required in regulation. The application ensures that the permit holder or the estate accurately provides the information required in regulation for the Department to review and process the transfer. The application is also required to be notarized. It is easier and more efficient for the permit holder and the Department when an application is used so that the permit holder or estate does not have to draft a letter to the Department when transferring a permit.

#### *Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit (DFW 1701) (New 2/2016)*

This form is proposed for subsection 705(c)(5) and its associated trap tag replacement fees are proposed for subsection 705(c)(6). Regulations for submitting catastrophic trap tag loss claims are described in proposed new subsection 122.1(c)(2). To request replacement trap tags, the lobster operator permit holder must complete DFW 1701, which includes:

- A description of the events that resulted in the destruction or loss of trap tags and any other information that will help the Department assess the circumstances of the loss.

- Documentation of any reports filed reporting the loss or destruction of trap tags.
- Date the trap tags were first known to be lost or destroyed.
- Last known location (latitude and longitude coordinates) of traps/tags.
- Date the traps were last serviced (if trap tags were lost due to trap loss).
- A description of weather events or other suspected caused of trap tag loss.
- Number of trap tags that were lost.

#### Necessity and Rationale

DFW 1701 is needed to provide the Department with a mechanism to document and assess claims of catastrophic trap tag loss as stipulated in proposed subsection 122.1(c)(2). The Department will only issue replacement tags for the number of trap tags reported as lost on the affidavit. All trap tags identified on the affidavit as lost by the lobster operator permit holder will become null and void, and remain so even if they are recovered at a later date, to ensure enforceability of the proposed 300 trap limit for each lobster operator permit.

#### End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW 1020) (New 02/18/16)

This form is proposed for subsection 705(c)(7) as described in proposed subsection 122.2(f). The proposed amendment would require that each lobster operator permit holder complete and submit DFW 1020 at the end of the fishing season (by April 15) for each lobster operator permit that he or she possesses to identify the number of traps lost during the just concluded lobster season. The affidavit must also describe the circumstances surrounding the loss of traps and, if possible, the approximate date and last known location of those traps. Fishermen are also required to indicate the trap tag numbers for each reported lost trap, including those lost traps marked with replacement tags acquired through a catastrophic loss claim.

#### Necessity and Rationale

The requirement for commercial fishermen to report end of season trap loss information (proposed DFW 1020) is necessary to estimate the number of traps lost during a season, verify the loss of Department issued tags and provide the Department with needed essential fisheries information (Fish and Game Code Section 93) to help inform future management decisions. The additional spatial information on trap loss will also be useful for informing gear recovery programs, identifying potential conflicts within the marine environment, and the issue of marine mammal gear interactions.

The Legislature finds and declares that the critical need to conserve, utilize, and manage the State's marine fish resources and to meet the policies and other

requirements stated in this part require that the State's fisheries be managed by means of fishery management plans.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Regulation: Authority: Sections 200, 202, 205, 215, 219, 220, 713, 1050, 2365, 7071, 7072, 7075, 7078, 7082, 8254, and 8259, Fish and Game Code.

Reference: Sections 200, 202, 205, 207, 215, 220, 1050, 2365, 7050, 7055, 7056, 7071, 7075, 7078, 7852.2, 8043, 8046, 8250, 8250.5, 8254, 9002, 9002.5, 9005, 9006, and 9010 Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None

(d) Identification of Reports or Documents Supporting Regulation Change:

Attachment 1: CDFW 2016. California Spiny Lobster Fishery Management Plan (Jan, 2016). California Department of Fish and Wildlife, Sacramento, California. <https://www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP>

Attachment 2: Estimated CDFW cost and fees for procurement and administering lobster trap tags per permit license year and fee for replacement trap tags.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Lobster Advisory Committee

The California Department of Fish and Wildlife (Department) conducted an extensive public scoping process to inform the development of the California Spiny Lobster FMP and the proposed implementation regulations. The Lobster Advisory Committee (LAC) was formed in the spring of 2012, following a call for volunteers to various public stakeholder groups by the Department. The purpose of the LAC is to involve constituent representatives with the development of the California Spiny Lobster FMP. The LAC provided guidance on California Spiny Lobster FMP objectives as well as management recommendations that addressed key issues put forth by members of the public. The LAC consisted of representatives from the marine science community, the recreational fishing sector, commercial fishing sector, the non-consumptive recreational sector, the environmental community, and the federal government. Nine LAC meetings occurred between June 2012 and September 2013; all meetings were open to the public, and public input was encouraged. The LAC meeting summaries as well as various background documents are available on the Department website at <https://www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP/Committee>.

LAC public meetings 2012-2013

1. June 20, 2012, Department Office, Los Alamitos, CA

2. August 1, 2012, Department Office, Los Alamitos, CA
3. September 5, 2012, Department Office, Los Alamitos, CA
4. December 5, 2012, Department Office, Los Alamitos, CA
5. April 10, 2013, Department Office, Los Alamitos, CA
6. June 12, 2013, Department Office, Los Alamitos, CA
7. July 10, 2013, Department Office, Los Alamitos, CA
8. August 15, 2013, Department Office, Los Alamitos, CA
9. September 11, 2013, Department Office, Los Alamitos, CA

#### Fish and Game Commission meetings

The Department provided updates on the California Spiny Lobster FMP process and details of the management framework (harvest control rules) at Commission meetings and at Fish and Game Commission Marine Resources Committee (MRC) meetings from 2014- 2015. All meetings were open to the public and provided opportunities for public comments. The Department and LAC regulatory recommendations were previously transmitted to the MRC at its March 2015 meeting and to the Commission for consideration at its April and June 2015 meetings. At the June 2015 meeting, the Commission directed the Department to prepare this regulatory package. The California Spiny Lobster FMP was delivered to the Commission for its consideration at its December 2015 meeting, the discussion hearing was held at the February 2016 meeting and adoption ~~is~~ **scheduled for** **was at** the Commission's April 2016 meeting.

The California Spiny Lobster FMP and proposed recreational and commercial regulations were discussed at the following MRC and Commission meetings (2013-2016)

1. December 11, 2013 Commission meeting
2. March 24, 2014 MRC meeting
3. August 5, 2014: MRC meeting.
4. November 5, 2014 MRC meeting
5. March 4, 2015 MRC meeting
6. April 8, 2015 Commission meeting
7. June 10, 2015 Commission meeting
8. December 9, 2015 Commission meeting
9. February 10, 2016 Commission meeting

#### IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: No alternatives were identified.
- (b) No Change Alternative:

Do not adopt the California Spiny Lobster FMP implementing regulations

~~and proposed commercial and recreational regulatory changes.~~

Continue managing the resource and fishery without a comprehensive management plan under current regulations. This alternative does nothing to promote a comprehensive management plan for the spiny lobster fisheries and does not bring spiny lobster management into conformance with the MLMA through adoption of implementing regulations as directed by the Legislature. While this alternative is not expected to result in immediate adverse impacts to the spiny lobster resource and fisheries, due to the generally conservative nature of current regulations (e.g. season and size limits), it would forego the greater opportunity for sustainable management under a comprehensive fishery management plan as required by the MLMA. The proposed commercial and recreational changes will clarify and improve enforcement of existing regulations and provide for a more orderly fishery.

(c) Consideration of Alternatives:

Other regulatory proposals considered by the Commission but not included in this regulatory proposal:

The LAC consensus and Department recommendations were presented to the Commission at the April 2015 meeting. At the June 2015 meeting, the Commission directed the Department to develop a regulatory package that included all Department and LAC recommendations except the following three below.

1. Restricting the use of mechanized pullers in the recreational fishery only to persons in possession of proof of disability. This was proposed to reduce the illegal tampering of commercial traps by recreational anglers using mechanized hoop net pullers. However, illegal use of mechanized pullers is not a commonly observed enforcement problem and as proposed would penalize the lawful anglers using mechanized pullers due to the very few anglers that may abuse the use of this gear.
2. A phase-in approach to the commercial trap limit. The phase-in trap limit approach was proposed by the LAC to provide fishermen with an alternative means of fishing up to 600 traps while waiting to purchase a second permit following the implementation of the commercial trap limit. The phase in approach was proposed in 2013 when the trap limit was thought to become effective for the 2015-16 season. The trap limit will not be effective until the 2017-18 season, which has provided individuals wanting to purchase a second permit with sufficient time to acquire a transferable permit. In addition, it would be difficult for the Department to implement and administer the program as proposed by the LAC.

3. Clarifying that branding of commercial trap floats is allowed. The branding of commercial floats is allowed under current regulations (subsection 122(k), Title 14, CCR; proposed to become new subsection 122.1(b), Title 14, CCR). The regulation currently requires the commercial fishing license number to "be in color which contrasts with that of the buoy." The branding of commercial fishing license number onto floats will result in a color, which contrasts with that of the float. Therefore, the proposed regulation is currently covered under existing regulation.

- (d) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business: None

**VI.** Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

**VII.** 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 initial 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:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action will not substantially increase compliance costs, is not anticipated to impact harvest quantities, and only applies to a fishery that is unique to the state of California. The commercial spiny lobster fishery extends from Point Conception in Santa Barbara County to the U.S./Mexico border. The recreational spiny lobster fishery covers the same range but also extends further north into San Luis Obispo County.

- (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 anticipates no negative impacts on the creation or

elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses because the proposed action will not significantly increase costs or reduce harvest quotas. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and spiny lobster resource.

(c) **Cost Impacts on a Representative Private Person or Business:**

The Commission anticipates an increase in the commercial lobster operator permit fee due to the proposed trap tag program to be approximately \$395 per permit. Permit holders may have the potential for a substantial gain from expanded permit transfer options and potential fuel savings with the increase in time for the maximum trap servicing requirement. The Commission is not aware of any cost impacts in the recreational lobster fishery, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(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.

**VIII. Economic Impact Assessment:**

**Commercial Spiny Lobster Fishery Economic Impact**

The commercial California spiny lobster fishery ranks as the fourth highest in ex-vessel value, ranging from \$15 to \$18 million in the last three seasons (after Dungeness crab, market squid, and Chinook salmon). This rank is achieved, despite having amongst the lowest harvest volume, by having generally the highest value per pound of all California fisheries. Market prices for spiny lobster have been increasing at a faster than average rate as well, in part driven by a boost in export demand. The spike in prices has been accompanied by increases in commercial trap effort over recent years.

The commercial spiny lobster fishery is a restricted access fishery with about 150 permits actively fished since 2008. In 2005, over two-thirds of the commercial lobster



permits became transferable. The high cost of market-traded permits (\$50,000-\$100,000) may also be a factor encouraging more trap pulls so as to recoup the cost of the permit.

The **California Spiny Lobster FMP Fishery Management Plan (FMP)** reports the 2009-10 to 2011-12 season average total economic output of the fishery statewide as \$22,523,000, which supports about 323 full-time equivalent (FTE) jobs. The annual harvest volume and market price have risen since. The 2012-13 to 2014-15 season estimates for the average total statewide economic output is now \$34,477,000, supporting about 495 FTE jobs. This is largely driven by the increase in ex-vessel value from \$11,188,354 (in \$2012) to \$17,141,722 (the average for the last three seasons in \$2015).

#### Commercial Lobster Fishery Average Economic Impacts (\$2015)

| California South Coast: Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties |                 |                  |                 |               |
|---------------------------------------------------------------------------------------------|-----------------|------------------|-----------------|---------------|
| Mean 2012-13, 2013-14, & 2014-15                                                            | Ex-Vessel Value | Indirect Effects | Induced Effects | Total Effects |
| Output                                                                                      | \$ 17,141,722   | \$ 7,764,017     | \$ 9,571,423    | \$ 34,477,180 |
| Employee Compensation                                                                       | \$ 1,066,181    | \$ 2,167,982     | \$ 2,675,566    | \$ 5,909,729  |
| Proprietor's Income                                                                         | \$ 5,870,817    | \$ 329,378       | \$ 454,496      | \$ 6,654,708  |
| Labor Income Effect                                                                         | \$ 6,937,015    | \$ 2,497,360     | \$ 3,130,061    | \$ 12,564,437 |
| Other Property Type Income                                                                  | \$ 304,283      | \$ 1,078,266     | \$ 2,003,233    | \$ 3,385,764  |
| Indirect Business Taxes                                                                     | \$ 1,149,472    | \$ 520,491       | \$ 565,557      | \$ 2,235,538  |
| Total Value Added                                                                           | \$ 8,390,770    | \$ 4,096,117     | \$ 5,698,851    | \$ 18,185,739 |
| Jobs - Full Time Equivalent (FTE)                                                           | 369.9           | 54.2             | 70.8            | 494.9         |

The largest landings occur within the first two weeks of the 23-24 week season. Eighty percent of the season's total catch is landed by the fifteenth week of the season. The economic impact of the catch by each south coast county for the last season, 2014-15 is shown below. The commercial lobster fishery adds about \$6.9 million dollars in total value added (also called net economic output) to Santa Barbara County, \$2.2 million to Ventura County, \$3.4 million dollars to Los Angeles County, \$2.1 million dollars to Orange County, and \$5.1 million dollars to San Diego County.

#### Commercial Lobster Fishery Economic Impacts by County for 2014-15 Season

| County                 | (2015\$) | Ex-Vessel Value<br>(2015) | Total Lobster-<br>Associated<br>Employment<br>(2015) | Employee<br>Compensation<br>(2015) | Total Value<br>Added (2015) | Total Economic<br>Output (2015) |
|------------------------|----------|---------------------------|------------------------------------------------------|------------------------------------|-----------------------------|---------------------------------|
| Santa Barbara*         | \$       | 6,527,889                 | 188.5                                                | \$ 2,250,535                       | \$ 6,925,470                | \$ 13,129,557                   |
| Ventura                | \$       | 2,126,246                 | 61.4                                                 | \$ 733,038                         | \$ 2,255,745                | \$ 4,276,523                    |
| Los Angeles            | \$       | 3,172,293                 | 91.6                                                 | \$ 1,093,670                       | \$ 3,365,501                | \$ 6,380,439                    |
| Orange                 | \$       | 2,014,218                 | 58.1                                                 | \$ 694,416                         | \$ 2,136,894                | \$ 4,051,200                    |
| San Diego              | \$       | 4,846,048                 | 139.9                                                | \$ 1,670,709                       | \$ 5,141,197                | \$ 9,746,866                    |
| California State Total | \$       | 18,686,694                | 539.5                                                | \$ 6,442,368                       | \$ 19,824,807               | \$ 37,584,585                   |

\* Santa Barbara County includes Channel Islands spiny lobster catch.

#### Recreational Spiny Lobster Fishery Economic Impact

The recreational spiny lobster fishery is not limited access and report card sales suggest that participation has fluctuated but overall remained stable over recent years. Newer hoop-net techniques deployed from boats have added another method beyond traditional diving for lobsters. Increased recreational activity brings more fisher spending into the coastal economies from San Luis Obispo County down to San Diego County, as the recreational fishery extends further north than the commercial fishery, into San Luis Obispo County. Annual expenditures in the recreational spiny lobster fishery were estimated to be \$37 million dollars for the 2011-12 season. Expenditures on spiny lobster fishing gear, personal boats, auto/vessel fuel, food, accommodations, dive/party boat fees, and other fishing-related expenditures circulate through the economy often doubling the initial direct spending in summing the total economic impact throughout the state. Recreational ocean fishing stimulates employment in a wide variety of sectors that support fishing-specific and traveler in general activities.

The proposed regulations are designed to balance the objectives of the long-term sustainability of the spiny lobster fishery while not burdening or limiting access for the spiny lobster commercial and recreational fisheries.

a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state because the proposed action is not likely to reduce harvest quantities. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and resource.

b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission anticipates no negative impacts on the creation of new businesses or the elimination of existing businesses within the state because the proposed action is not likely to reduce harvest quantities. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and resource.

c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission anticipates no negative impacts on the expansion of businesses currently doing businesses within the state because the proposed action is not likely to reduce harvest quantities. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and resource.

d) **Benefits of the Regulation to the Health and Welfare of California Residents:**

The Commission anticipates generalized benefits to the health and welfare of California residents through the sustainable management of the spiny lobster resource.

The proposed regulations are intended to implement the California Spiny Lobster FMP and add clarity to existing regulations to improve management of the fisheries. Implementation of the FMP is anticipated to benefit persons engaged in the spiny lobster fisheries by supporting the long-term viability of spiny lobster fisheries and associated business activities.

e) **Benefits of the Regulation to Worker Safety:**

The Commission anticipates that this regulatory action will not have any impact on worker safety.

f) **Benefits of the Regulation to the State's Environment:**

The Commission anticipates benefits to the State's Environment. It is the policy of this State to ensure "the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State" (FGC Section 7050(b)). The benefits of the proposed regulatory action are sustainable management of the spiny lobster resource for both the commercial and recreational fisheries. The proposed regulations to implement the California Spiny Lobster FMP supports the MLMA (FGC Sections 7070-7088), which requires the State's fisheries be managed by means of fishery management plans. The California Spiny Lobster FMP serves as the foundation for managing the spiny lobster resource, including mechanisms to prevent, detect, and recover from overfishing, as required by the MLMA. The proposed changes to existing commercial and recreational regulations clarify the implementation of the spiny lobster regulations to support orderly fisheries.

g) **Other Benefits of the Regulation:**

The intent of the proposed action is the long-term sustainability of the spiny lobster resource and viability of the commercial and recreational fisheries in accordance to the objectives of the MLMA. The proposed regulatory action will ensure the long-term economic, recreational, cultural, and social benefits of the fisheries by maintaining a healthy and sustainable spiny lobster resource.

## **Updated Informative Digest/Policy Statement Overview**

Under current regulations, management of the California spiny lobster fishery is contained under multiple sections (sections 29.80, 29.90, 29.91, 121, 121.5 and 122) of Title 14 of the California Code of Regulations (CCR). Section 29.80 provides general gear restrictions for the recreational take of crustaceans. Section 29.90 provides recreational fishery regulations specific to spiny lobster with report card requirements for the recreational fishery found in Section 29.91. Section 121 regulates the possession of spiny lobster during the closed season. Section 121.5 regulates the processing of spiny lobster. Section 122 provides regulations for the commercial fishery, including permit requirements, gear provisions, trap servicing requirements, restricted fishing areas, permit transfers, and logbook requirements.

In accordance with the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code (FGC) sections 7050-7090), regulations are proposed to implement a California Spiny Lobster Fishery Management Plan (FMP) and to amend existing recreational and commercial spiny lobster fishing regulations to manage the spiny lobster resource at a sustainable level and support orderly fisheries. It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State (FGC Section 7050(b)). The MLMA contemplates the management of state fishery resources through FMPs developed by the Department of Fish and Wildlife (Department) and adopted by the Fish and Game Commission (Commission) (FGC sections 7072, 7075 and 7078).

FGC subsection 7071(b) provides authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery. To implement the conservation and management measurements identified in the California Spiny Lobster FMP, including a proposed trap limit program, the implementing regulations of this FMP will render the following sections of the FGC inoperative once they are adopted:

- 1) FGC sections 8251, 8252, and 8258. These sections prescribe the commercial season length, size limit, and list the Districts where commercial lobster traps may be used. The FMP contemplates changes to season length, minimum size and district closures as possible future conservation and management measures. The commercial season length and size limit will be moved into Title 14, CCR reflecting the Commission's authority to make future adjustments.
- 2) FGC sections 7857(e), 7857(j), 8102, 8103, and 8254(c). These sections state the conditions for issuing and transferring commercial fishing permits and lobster operator permit fees. Each will be made inoperative as they apply to the spiny lobster fishery to be consistent with the commercial spiny lobster limited entry fishery permit program described in the FMP and proposed trap limit program.
- 3) FGC section 9004: This section requires commercial fishermen to service any deployed trap every 96 hours. The proposed trap servicing regulation in new

Section 122.2 will extend the servicing requirement to every 168 hours. As such, this section will be rendered inoperative as applied to the spiny lobster fishery.

Upon adoption by the Commission, the California Spiny Lobster FMP will establish a management program for the spiny lobster recreational and commercial fisheries and detail the procedures by which the spiny lobster resource will be managed by the Department. The proposed regulations would implement the FMP in accordance with the policy goals enumerated in the MLMA. The proposed implementing regulations are divided into three parts: 1) new regulations to implement the FMP, 2) amendments and additions to the recreational fishing regulations, and 3) amendments and additions to the commercial fishing regulations. The following is a summary of the proposed changes to Title 14, CCR:

- 1) Establish a new Article in Chapter 5.5, Subdivision 1, Division 1, Title 14, CCR and add new sections 54.00, 54.01, 54.02, and 54.03. The proposed new sections will:
  - a. describe the purpose and scope of the California Spiny Lobster FMP;
  - b. provide relevant definitions used in the California Spiny Lobster FMP;
  - c. describe management processes and timing; and
  - d. describe the harvest control rule (HCR) as the management basis for the California Spiny Lobster FMP.
- 2) Amendments are proposed to existing recreational lobster fishery regulations in subsections (b) and (g) of Section 29.80 and subsections (a), and (c), and (f) of Section 29.90. ~~If adopted, the~~ proposed amendments will:
  - ~~a. Provide an option to require hole punching or fin clipping of recreationally caught lobsters, with commercial market restrictions, to distinguish recreational catch from commercial catch for enforcement purposes.~~
  - b. Delay the start of the recreational season six hours from the current start time of 12:01 a.m. to 6:00 a.m. for safety purposes.
  - c. Require buoy marking of hoop nets used south of Point Arguello for identification and enforcement purposes.
  - d. Clarify existing language on the possession of a hooked device while taking lobster. This regulatory change will provide clarification for both recreational divers and enforcement.
  - e. Clarify measuring requirements in order to allow for measuring lobster aboard a boat. The proposed change will allow hoop netters to bring spiny lobster aboard a vessel where they can be measured safely.
  - f. Make editorial changes to improve clarity of existing regulations.
- 3) Amendments to the commercial fishing are proposed to sections 121, 121.5, 122, and 705 as well as the addition of new sections 122.1 and 122.2. ~~If adopted, the~~ proposed amendments will:

- a. Implement a new trap limit program, effective October 2017, to specify 300 traps per lobster operator permit, and establish lobster trap tags, ~~new buoy marking requirements~~, and lost trap replacement (i.e., "catastrophic trap tag loss") measures. The establishment of a trap limit program will optimize and create a more orderly commercial fishery as well as provide improved understanding of the amount gear used in the fishery.
- b. Allow permittees to possess up to two lobster operator permits. The possession of two lobster operator permits will allow a commercial fisherman to deploy a maximum of 600 traps in accordance with the proposed trap limit program.
- c. Allow permittees to retrieve up to 6 lobster traps of another lobster operator permit holder that were lost, ~~or damaged, abandoned, or otherwise derelict lobster traps~~ per fishing trip to help reduce potential impact of fishing gear on living marine resources and underwater habitat.
- d. Require Department approval of a waiver request for one lobster operator permit holder to service the trap of another. The proposed regulation will provide clear rules for requesting a waiver and improve regulatory enforcement.
- e. Require each fisherman who holds a lobster operator permit to submit an end of the season trap loss affidavit for each permit they hold at the end of each season to estimate gear loss in the fishery.
- f. Extend the maximum trap service requirement from 4 to 7 days to provide fishermen more flexibility to service their gear and for safety purposes.
- g. Extend the pre- and post-season gear deployment periods from 6 to 9 days for safety purposes.
- h. Extend the lobster operator permit holder death provision from 1 to 2 years to provide more time to transfer the lobster operator permit.
- i. Update permit renewal and transfer regulations for clarity and consistency with the proposed trap limit program.
- j. Update description of restricted fishing areas with latitude and longitude coordinates for clarification purposes.
- k. Provide clarification for identifying abandoned traps in state waters.
- l. Provide modifications to the existing fishing logbook format to improve data collection.
- ~~m. Provide an option that would prohibit the sale of hole-punched or tail-clipped lobster in the markets for enforcement purposes.~~
- n. Establish fees for lobster operator permit and trap tags. Currently, lobster operator permit fees are located in FGC Section 8254(c), however, this code section will be rendered inoperative as part of the California Spiny Lobster FMP implementing regulations ~~as need to implement the trap limit and trap tag program for the 2017-2018 lobster season.~~
- o. Clarify that all lobster operator permit holder fishing jointly on one vessel

will be liable for any violation from that vessel.

- p. Clarify existing language on the use and possession of SCUBA gear in the Commercial fishery.
- q. Make editorial changes to improve clarity of existing regulations.

The proposed regulations were drafted to serve the sustainability and social policy objectives enumerated in FGC Sections 7050, 7055, and 7056. The amended sections would not conflict with existing Title 14 regulations, and any part of the FGC that conflict to the proposed regulations will be made inoperative as applied to the spiny lobster fishery (FGC Section 7071(b)).

#### UPDATE:

The amended Initial Statement of Reasons adds statements of necessity to Section III (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary; other clarifying statements; and, minor editorial changes. These statements are directly related to the revised proposed regulatory text in the California Spiny Lobster Fishery Management Plan implementing regulations. The California Spiny Lobster Fishery Management Plan, adopted by the Commission on April 13, 2016, is incorporated by reference in the amended regulatory language.

The additions to the Initial Statement of Reasons are indicated in bold, double underlined text in this Amended Initial Statement of Reasons; deletions are indicated by ~~bold double strikeout text~~. Minor edits and additions or deletions for improved clarity, spelling, punctuation, etc., that do not affect content, are not shown.

## Revised Proposed Regulatory Language

Text originally proposed to be deleted is shown in ~~single strikeout~~ format and text newly proposed to be deleted is shown in ~~**bold double strikeout**~~ format.

Text originally proposed to be added is shown in single underline format and text newly proposed to be added is shown in **bold double underline** format.

### **Section 29.80, Title 14, CCR, is amended to read:** **§ 29.80. Gear Restrictions.**

[No changes to subsection (a)]

(b) Hoop nets may be used to take spiny lobsters and all species of crabs. Between Point Arguello, Santa Barbara County, and the United States-Mexico border, not more than five hoop nets, as defined in (b)(1)(A) or (b)(1)(B), shall be possessed by a person when taking spiny lobster or crab, not to exceed a total of 10 hoop nets possessed when taking spiny lobster or crab, per vessel. The owner of the hoop net or person who placed the hoop net into the water shall raise the hoop net to the surface and inspect the contents of the hoop net at intervals not to exceed 2 hours.

[No changes to subsection (b)(1)]

(2) Any hoop net abandoned or left unchecked for more ~~than~~than 2 hours shall be considered abandoned and seized by any person authorized to enforce these regulations.

(3) ~~Beginning on April 1, 2017, hoop~~Hoop nets used south of Point Arguello shall be marked with a surface buoy. The surface buoy shall be legibly marked to identify the operator's GO ID number as stated on the operator's sport fishing license or lobster report card. Hoop nets deployed from persons on shore or manmade structures connected to the shore are not required to be marked with a surface buoy.

[No changes to subsections (c)-(f)]

(g) Diving for crustaceans: In all ocean waters, except as provided in Section 29.05, skin and SCUBA divers may take crustaceans by the use of the hands only. Divers may not possess any hooked device while diving or attempting to dive. Divers may be in possession of spearfishing equipment so long as possession of such equipment is otherwise lawful and is not being used to aid in the take of crustaceans.

[No changes to subsections (h)-(j)]



Note: Authority cited: Sections 200, 202, 205, 215, and 220, 7075 and 7078, Fish and Game Code. Reference: Sections 200, 202, 205, 206, 215, and 220, 7050, 7055 and 7056, Fish and Game Code.

**Section 29.90, Title 14, CCR, is amended to read:**

**§ 29.90. Spiny Lobsters.**

(a) Open season: ~~From the Saturday preceding the first Wednesday in October through the first Wednesday after the 15th of March. Beginning with the 2017-2018 lobster season:~~ From 6:00 a.m. on the Saturday preceding the first Wednesday in October through the first Wednesday after the 15th of March.

[No changes to subsection (b)]

(c) Minimum size: ~~Three and one fourth~~ **3 and 1/4** inches measured in a straight line on the mid-line of the back from the rear edge of the eye socket to the rear edge of the body shell. Any lobster may be brought to the surface of the water for the purpose of measuring, but no undersize lobster may be brought aboard any boat, placed in any type of receiver, kept on the person or retained in any person's possession or under his direct control; all lobsters shall be measured immediately upon being brought to the surface of the water, and any undersize lobster shall be released immediately into the water. All lobsters shall be measured immediately and any undersize lobster shall be released immediately into the water. Divers shall measure lobsters while in the water and shall not remove undersized lobsters from the water. Hoop netters may measure lobsters out of the water, but no undersize lobster may be placed in any type of receiver, kept on the person or retained in any person's possession or under his or her direct control.

[No changes to subsections (d)-(e)]

~~**Option—Require tail clipping along with market restrictions in the commercial regulations**~~

~~**(f) Marking of retained spiny lobster: Beginning with the 2017-2018 lobster season: A person taking spiny lobster recreationally shall punch a single circular hole in the center tail fin with a minimum circular diameter of one fourth inch (1/4 inch) or remove the bottom half of the central tail fin of all retained spiny lobster at or before the time catch information is required to be recorded on the report card as specified in Section 29.91(c) of these regulations. Hole punched or tail clipped lobsters shall not be released into ocean waters, except employees of the department may release hole punched lobster into ocean waters while performing their official duties.**~~

Note: Authority cited: Sections 200, 202, 205, 219, and 220, 7075 and 7078, Fish and Game Code. Reference: Sections 200, 202, 205, 210, and 220, 7050, 7055 and 7056, Fish and Game Code.

Article 5.0 of Chapter 5.5 of Subdivision 1 of Title 14, CCR is added to read:

**Article 5.0 California Spiny Lobster Fishery Management Plan**

**Section 54.00, Title 14, CCR, is added to read:**

**§ 54.00 Purpose and Scope**

(a) This Article implements the Spiny Lobster Fishery Management Plan (Spiny Lobster FMP) as adopted and amended by the commission consistent with the goals, objectives and procedures of the Marine Life Management Act of 1999. ~~These regulations~~ This Article, in combination with other applicable provisions of the Fish and Game Code and Title 14, CCR, govern management and regulation of the spiny lobster resources and fisheries.

(b) Regulations implementing the Spiny Lobster FMP are found in this Chapter. Regulations specific to recreational take of spiny lobster are found in Chapter 1, Section 1.74 and Chapter 4, beginning with Section 27.00, of these regulations. Regulations specific to the commercial take of spiny lobster are included in Chapter 6, beginning with Section 121 of these regulations. ~~Fish and Game Code Section 7256 prohibits recreational take of spiny lobster with means other than by hands or with hoop nets. Fish and Game Code Division 6 Part 3 Chapter 2 Article 5 further control various aspects of the commercial fishery.~~

(c) Pursuant to Fish and Game Code Section 7071(b), Fish and Game Code sections 8251, 8252, 8254(c), and 8258 are made inoperative.

(d) Pursuant to Fish and Game Code Section 7071(b), Fish and Game Code sections, 7857(e), 7857(j), 8102, 8103, and 9004 are made inoperative as applied to the commercial spiny lobster fishery.

Note: Authority cited: Sections 7071, 7075 and 7078, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 7070, 7071, 7075 and 7078, Fish and Game Code.

**Section 54.01, Title 14, CCR, is added to read:**

**§ 54.01 Definitions**

(a) Catch, in the context of the harvest control rule, means the total weight of spiny lobster reported on commercial landing receipts in a fishing season.

(b) Catch per unit effort means the number of legal lobsters caught per trap pull for the commercial fishery.

(c) District closure means temporary or permanent closure of one or more Fishing Districts as defined in Fish and Game Code sections 11026, 11027, 11028, 11029, 11030, 11031, 11032, 11038, and 11039 to the commercial and/or recreational take of spiny lobster.

(d) Harvest control rule is defined in Section 50.01 of these regulations. In the Spiny Lobster FMP, the harvest control rule is a management framework consisting of three threshold reference points, a harvest control rule matrix, and a harvest control rule "toolbox" of conservation and management options.

(e) Harvest control rule matrix means the matrix prescribed in the Spiny Lobster FMP detailing the possible causes of having one, two, or all three threshold reference points crossed and the management response sequence for those scenarios.

(f) Harvest control rule toolbox means the conservation and management measures identified in the Spiny Lobster FMP harvest control rule that are available to the commission when threshold reference points are crossed and management action is recommended.

(g) Spawning Potential Ratio means the ratio of the number of eggs produced by a fished population over the number of eggs produced by an unfished population.  
(h) Spiny lobster means ~~Panulirus interruptus~~ *Panulirus interruptus* as defined in Fish and Game Code Section 8250.  
(i) Spiny Lobster FMP means chapters 1-6 of the California Spiny Lobster Fishery Management Plan as approved by the commission on April 13, 2016, hereby incorporated by reference.  
(j) Threshold reference point means a quantitative value that indicates that the status of a stock is at a level of concern and that management action may be needed to improve stock status. In the Spiny Lobster FMP, threshold reference points are based on commercial catch, catch per unit effort, and spawning potential ratio.  
(k) Trap limit means a formal program adopted by the commission that limits the number of traps a commercial fisherman may fish at any one time during a season.  
(l) Total allowable catch means a specified numerical catch objective for each fishing season, the attainment (or expected attainment) of which may cause closure of the fishery.  
(m) Definitions contained in Chapter 1 and Article 1 of Chapter 5.5 of these regulations, and Chapters 1 and 2 of Division 0.5 of the Fish and Game Code apply to the spiny lobster fishery in addition to definitions of this Section.  
Note: Authority cited: Sections 7075 and 7078, Fish and Game Code. Reference: Sections 7071, 7082, 8252, ~~41026-41032~~ 11026, 11027, 11028, 11029, 11030, 11031, 11032, 11038 and 11039, Fish and Game Code.

**Section 54.02, Title 14, CCR, is added to read:**

**§ 54.02 Management Process and Timing**

(a) Spiny lobster management will conform to the goals, objectives, criteria, procedures, and harvest control rule guidelines in the Spiny Lobster FMP, and other applicable state and federal laws and regulations.  
(b) Monitoring and assessment of the spiny lobster fisheries will be conducted annually, including the collection and review of catch reports and fishing logbook information. The department will provide management recommendations to the commission as needed.  
(c) Conservation and management measures may be developed, considered, and adopted in compliance the Administrative Procedures Act and implemented at any time of year to achieve management plan goals and objectives, and may apply to any or all management areas, or portions of management areas at the discretion of the commission.

Note: Authority cited: Sections 7075 and 7078, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 7070, 7071, 7075 and 7078, Fish and Game Code.

**Section 54.03, Title 14, CCR, is added to read:**

**§ 54.03 Harvest Control Rule**

(a) The harvest control rule adopted and described in the Spiny Lobster FMP shall form the management basis for the spiny lobster commercial and recreational fisheries. The harvest control rule is comprised of three components.

(1) Three threshold reference points as defined in the Spiny Lobster FMP based on commercial catch, catch per unit effort, and spawning potential ratio that serve as metrics to gauge the status of the spiny lobster fishery and resource.

(2) A harvest control rule matrix that guides the appropriate management responses based on the status and trends of each threshold reference point scenario.

(3) A suite of conservation and management measures in the harvest control rule "toolbox" giving the department and commission flexibility in addressing emerging and ongoing concerns within the spiny lobster fishery and resource.

(b) Monitoring and assessment of the harvest control rule threshold reference points will be conducted annually utilizing the best readily available data and other relevant information. If one or more of the threshold reference points are crossed, the harvest control rule matrix will guide the department management response, which may include consultation with fishing communities and other stakeholders when investigating the cause of an exceeded reference point.

(c) If the department determines that a management response is warranted, the commission may adopt one or more of the conservation and management measures specified in the Spiny Lobster FMP harvest control rule "toolbox" pursuant to Section ~~50.03(a)~~ 54.03(a) of these regulations.

Note: Authority cited: Sections 7072 and 7082, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 7070, 7071, 7075 and 7078, Fish and Game Code.

**Section 121, Title 14, CCR, is amended to read:**

**§ 121. Lobsters, Spiny. Open Season and Possession During Closed Season.**

(a) Spiny lobsters may be taken only between the first Wednesday in October and the first Wednesday after the 15th of March.

(b) No spiny lobsters may be sold or possessed during the closed season except as follows: Lobsters taken or imported during the open season which were cooked and frozen or frozen prior to the close of the open season, and lobsters imported into California during the twenty-six (26) days following the close of the open season, provided such lobsters were cooked and frozen or frozen prior to importation. During the closed season, after the twenty-six (26) day importation period, no spiny lobsters may be possessed on any boat, barge, or vessel.

Note: Authority cited: Sections 240 and 2365, Fish and Game Code. Reference: Sections 240, 2365 and 8254, Fish and Game Code.

**Section 121.5, Title 14, CCR, is amended to read:**

**§ 121.5, Lobster, Spiny. Minimum Size and Verification of Size.**

(a) No spiny lobster less than ~~three and one-quarter~~ 3 and 1/4 inches in length measured in a straight line from the rear edge of the eye socket to the rear edge of the body shell, both points to be on the midline of the back, may be taken, possessed, purchased, or sold.

(b) Every person taking spiny lobster shall carry a fixed caliper measuring device and shall measure any lobster immediately on removal from the trap and if it is found to be undersize the spiny lobster shall be returned to the water immediately. A trap shall be serviced prior to any additional trap being brought aboard a vessel.

(a)(c) All California spiny lobsters (~~Panulirus interruptus~~*Panulirus interruptus*) taken, possessed, transported or sold must be maintained in such a condition that their size can be determined as described in Section 121.5(a) of these regulations pursuant to Fish and Game Code Section 8252 until prepared for immediate consumption or sold to the ultimate consumer except as provided for in subsection (d) below.

(b)(d) California spiny lobsters may be split along the midline of the carapace by persons licensed pursuant to Fish and Game Code Section 8034 (Fish Processors License) or Section 8037 (Commercial Fish Business License) provided both halves of each lobster are kept together by banding or packaging until either displayed for purchase by the ultimate consumer or prepared for immediate consumption.

~~[Proposed addition of subsection (e) to align with sport tail clipping Option 29.90(f)]~~

~~(e) Beginning with the 2017-2018 lobster season, except as otherwise provided in subsection 29.90(f) of these regulations, it shall be unlawful to possess, sell, or offer for sale in a place of business where fish are bought, sold or processed, any spiny lobster that has been hole punched or tail clipped.~~

Note: Authority cited: Sections 240, 2365 and 8254, Fish and Game Code. Reference: Sections 240, 2365 and 8254, Fish and Game Code.

**Section 122, Title 14, CCR, is amended to read:**

**§ 122. Lobsters, Permits to Take Spiny Lobster Permits and Restricted Areas.**

(a) Classes of Lobster Permits.

(1) There is a transferable lobster operator permit, a non-transferable lobster operator permit and a lobster crewmember permit.

(2) Under operator permits issued by the department, licensed commercial fishermen may take spiny lobsters for commercial purposes, but only with traps used pursuant to Fish and Game Code Section 9010, except that such traps shall only be used in Districts 18, 19, 20A, and that part of District 20 southerly of Santa Catalina Island between Southeast Rock and China Point. No other method of take is authorized for the commercial harvest of spiny lobsters.

(3) Any licensed commercial fisherman ~~not eligible to obtain a lobster operator permit pursuant to this section~~ that does not possess a valid transferable or non-transferable lobster operator permit may purchase a lobster crewmember permit, authorizing him/her to accompany the holder of a lobster operator permit holder and to assist that person the lobster operator permit holder in the commercial take of spiny lobster.

(4) Exemption from Tidal Invertebrate Permit. A lobster operator permit holder or a lobster crewmember permit holder operating under the provisions of a lobster operator permit is not required to possess a Tidal Invertebrate Permit, but is subject to the provisions of Section 123 of these regulations.

(b) Permit Renewal.

(b)(1) Each lobster operator permit shall be issued annually and shall be valid for the period of the commercial lobster season. Each operator and crewmember permittee shall have his/her permit in ~~immediate~~ possession when taking lobsters.

(2) Applicants for renewal of a lobster operator permit shall be eligible to renew a lobster operator permit of the same classification, if they have held a valid lobster operator permit that has not been suspended or revoked, in the immediately preceding permit year.

(3) ~~Beginning with the 2017-2018 lobster season, not~~ No more than ~~two~~ 2 lobster operator permits shall be issued to a licensed commercial fisherman.

(4) Procedures and Deadline for Permit Renewal.

Applications for renewal of transferable and non-transferable lobster operator permits must be received by the department or if mailed, postmarked ~~not~~ no later than April 30 of each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2. Any person denied a permit under ~~these regulations~~ this Section may submit a written request for an appeal to the commission to show cause why his/her permit request should not be denied. Such request must be received by the commission within 60 days of the department's denial.

(c) Permit Transfers, Procedures, and Timelines.

(e)(1) Except as provided in this section, a permit shall not be assigned or transferred, and any right or privilege granted thereunder is subject to revocation, without notice, by the Fish and Game Commission ~~commission~~, at any time.

(2) A person with a valid transferable lobster operator permit that has not been suspended or revoked may transfer his/her permit to another person licensed as a California commercial fisherman. The permit holder or the estate of the deceased permit holder shall submit the ~~notarized~~ transfer application and the nonrefundable permit-transfer fee specified in Section 705 for each permit transfer. The transfer shall take effect on the date written notice of approval of the application is given to the transferee by the department. ~~The permit holder shall transfer all department issued trap tags to the transferee after the permit transfer has been approved by the department.~~ The lobster operator permit shall be valid for the remainder of the permit year and may be renewed in subsequent years pursuant to ~~these regulations~~ this Section.

(A) ~~Beginning with the 2017-2018 permit year,~~ If a transferable lobster operator permit is transferred to a person with a valid transferable lobster operator permit and non-transferable lobster operator permit, the non-transferable lobster operator permit shall become null and void and the permit and trap tags shall be immediately surrendered to the department's License and Revenue Branch.

(3) An application for a transfer of a lobster operator permit shall be deferred ~~pending~~ when the current permit holder is awaiting final resolution of any ~~outstanding~~ pending criminal, civil and/or administrative action that could affect the status of the permit.

(4) Upon the death of a person with a valid transferable lobster operator permit, the estate of a person with a valid transferable lobster operator permit shall immediately ~~surrender~~ temporarily relinquish the permit to the department's License and Revenue Branch. ~~Beginning with the 2017-2018 lobster season, trap~~ Trap tags shall also be ~~surrendered~~ temporarily relinquished to the department's License and Revenue Branch. The estate may renew ~~that~~ the permit as provided for in ~~these regulations~~ this Section if needed to keep ~~it~~ the permit valid. The estate of the ~~decedent~~ may transfer ~~that~~ the permit pursuant to ~~these regulations~~ this Section no later than ~~two~~ 2 years from the date of death of the permit holder as listed on the death certificate.

~~(5) Upon the death of the person with a valid non-transferable lobster operator permit, the permit shall become null and void and the estate shall immediately surrender the permit to the department's License and Revenue Branch.~~

~~(A) Beginning with the 2017-2018 permit year, Upon the death of the person with a valid non-transferable lobster operator permit, the permit shall be null and void and the estate shall immediately surrender the permit and trap tags to the department's License and Revenue Branch.~~

~~(6) Any applicant who is denied transfer of a transferable lobster operator permit may submit a written request for an appeal to the commission within 60 days of the date of the department's denial.~~

~~(d) Applicants for the renewal of lobster operator permits shall have held a valid lobster operator permit, that has not been suspended or revoked, in the immediately preceding permit year.~~

~~(e) The holder of a valid lobster operator permit that has not been suspended or revoked, from the immediately preceding permit year shall be eligible to purchase a lobster operator permit of the same classification.~~

~~(f) Procedures and Deadline for Permit Renewal.~~

~~Applications for renewal of transferable and non-transferable lobster operator permits must be received by the department or if mailed, postmarked not later than April 30 of each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2. Any person denied a permit under these regulations may request a hearing before the commission to show cause why his/her permit request should not be denied. Such request must be received by the commission within 60 days of the department's denial.~~

~~(g) No SCUBA equipment or other breathing device may be used to assist in the take of lobster on any boat being operated pursuant to a commercial lobster permit.~~

~~(h) All provisions of the Fish and Game Code and regulations of the Fish and Game Commission relating to lobsters shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction or control.~~

~~(i) No lobster trap used under authority of this permit shall be pulled or raised or placed in the water between one hour after sunset to one hour before sunrise.~~

~~(j) All lobster traps and receivers impounding lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices, commonly called "pop-ups."~~

~~(k) Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license number and the letter P shall be in a color which contrasts with that of the buoy and shall be at least one (1) inch in height and at least one-eighth (1/8) inch in width. All lobster permit holders shall maintain lobster trap buoys in such a condition that buoy identifying numbers are clearly readable.~~

~~(l) Any person pulling or raising lobster traps and receivers bearing a commercial fishing license number other than his/her own must have in his/her possession from the party who holds the permit assigned to said gear written permission to pull the traps, or receivers.~~

~~(m) The employees of the department may disturb or move any lobster trap at any time while such employees are engaged in the performance of their official duties and shall inspect any lobster trap to determine whether it is in compliance with all provisions of the Fish and Game Code and regulations of the commission.~~

~~(n) During the closed season for the taking of spiny lobster, no buoy attached to any trap may be marked in such manner as to identify the trap as a lobster trap, except that legally marked lobster traps may be placed in the water not more than six (6) days before the opening of the season and may remain in the water for not more than six (6) days after the close of the season, if the door or doors to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take spiny lobsters.~~

~~(e)(d) Restricted fishing areas~~Fishing Areas.

(1) No lobster trap used under the authority of this permit shall be used within 750 feet of any publicly-owned pier, wharf, jetty or breakwater; however, such traps may be used to within 75 feet of any privately-owned pier, wharf, jetty or breakwater.

(2) No lobster traps shall be set or operated within 250 feet of the following specified navigation channels.

~~(A) Newport Bay: Starting at the demarcation line at the entrance to Newport Bay and extension of the west side channel line, proceed southeasterly on a bearing of 154° magnetic one nautical mile; then northeasterly 44° magnetic 500 feet; then northwesterly 331° magnetic one nautical mile to the demarcation line and an extension of the east side channel line.~~

~~(B) Dana Point Harbor: Starting from Dana Point east jetty light "6," proceed on a bearing of 120° magnetic 450 yards to red buoy "4"; then south 180° magnetic one nautical mile; then westerly 270°, 300 yards; then north 0° magnetic approximately one nautical mile to Dana Point Harbor light "5."~~

~~(C) Oceanside Harbor: Starting from Oceanside Harbor breakwater light "1," proceed on a bearing of 225° magnetic for one nautical mile; then southeast for 450 yards on a bearing of 140° magnetic; then northeast on a bearing of 35° magnetic for one nautical mile to Oceanside Harbor south jetty light "2"; then west southwest on a bearing of 253° to the point of beginning at Oceanside Harbor breakwater light "1."~~

(A) Newport Bay Harbor entrance: This area is bounded by straight lines connecting the following points in the order listed:

33° 35.316' N. lat. 117° 52.744' W. long.;

33° 34.365' N. lat. 117° 52.374' W. long.;

33° 34.412' N. lat. 117° 52.294' W. long.;

33° 35.368' N. lat. 117° 52.658' W. long.; and

33° 35.316' N. lat. 117° 52.744' W. long.

(B) Dana Point Harbor entrance: This area is bounded by straight lines connecting the following points in the order listed:

33° 27.262' N. lat. 117° 41.492' W. long.;

33° 26.289' N. lat. 117° 41.721' W. long.;

33° 26.254' N. lat. 117° 41.509' W. long.;

33° 27.201' N. lat. 117° 41.286' W. long.;

33° 27.409' N. lat. 117° 41.522' W. long.; and

33° 27.262' N. lat. 117° 41.492' W. long.



(C) Oceanside Harbor entrance: This area is bounded by straight lines connecting the following points in the order listed:

33° 12.344' N. lat. 117° 24.166' W. long.;

33° 12.332' N. lat. 117° 24.164' W. long.;

33° 11.775' N. lat. 117° 25.155' W. long.;

33° 11.659' N. lat. 117° 24.928' W. long.;

33° 12.233' N. lat. 117° 24.047' W. long.;

33° 12.362' N. lat. 117° 23.975' W. long.; and

33° 12.344' N. lat. 117° 24.166' W. long.

~~(p)~~(e) Records. Pursuant to ~~section~~Section 190 of these regulations, any person who owns and/or operates any vessel used to take lobsters for commercial purposes shall complete and submit an accurate record of his/her lobster fishing activities on a form (Daily Lobster Log, DFGDFW 122 (7/96REV. 03/04/16), incorporated herein by reference) provided by the department.

~~(q)~~(f) The person required to submit logs pursuant to Section 190 of these regulations shall have complied with said regulations during the immediate past license year, or during the last year such person held a permit, in order to be eligible for a successive year annual permit.

(g) All lobster operator permit holders fishing jointly on one vessel shall both be liable for any violation incurred by any of the lobster operator permit holders or crew-member permit holders fishing from that vessel.

(h) No SCUBA or other underwater breathing apparatus equipment shall be used to take lobster, except that this equipment shall only be used to locate and secure traps for retrieval. Lobsters contained in a trap that has been secured using SCUBA, or any other underwater breathing apparatus equipment, may be possessed after the trap has been serviced aboard the vessel only if the secured trap(s) has not exceeded the trap service interval requirement as specified in subsection 122.2(d) of these regulations.

(r) Procedures, Timelines on Permit Transfers.

(1) The holder of a valid transferable lobster operator permit that has not been suspended or revoked may transfer his/her permit to another person licensed as a California commercial fisherman. The application to transfer a permit shall be in the form of a notarized letter from the existing permit holder identifying the transferee and shall include the original transferable lobster operator permit, a copy of the transferee's commercial fishing license and a nonrefundable permit transfer fee as specified in Section 705. The application shall be submitted to the department's License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834. The transferable lobster operator permit shall be valid for the remainder of the current lobster season and may be renewed in subsequent years pursuant to these regulations. If the transferee holds a non-transferable lobster operator permit, that permit shall be cancelled.

(2) The estate of the holder of a transferable lobster operator permit may renew that permit as provided for in these regulations if needed to keep it valid. The estate of the decedent may transfer that permit pursuant to these regulations no later than one year from the date of death of the permit holder as listed on the death certificate.

(3) Upon the death of the individual to whom a non-transferable Lobster Operator Permit is issued, the permit shall become null and void.

Note: Authority cited: Sections 1050, 7075, 7078, 8254 and 8259, Fish and Game Code. Reference: Sections 1050, 2365, 7050, 7055, 7056, 7071, 7852.2, 8026, 8043, 8046, 8250-8259, 9002-9006, 8250, 8250.5, 8254, 9002, 9002.5, 9005, 9006 and 9010, Fish and Game Code.

**Section 122.1 Title 14, CCR, is added to read:**

**§ 122.1 Lobster Buoys and Trap Tags**

(a) All lobster traps and receivers impounding lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices with a timed delay (commonly called "pop-ups") that does not exceed the trap service interval requirement as specified in subsection 122.2(d) of these regulations.

(b) Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license identification number and the letter P shall be in a color which contrasts with that of the buoy and shall be at least ~~one (1)~~ 1 inch in height and at least ~~one-eighth (1/8)~~ 1/8 inch in width. All lobster operator permit holders shall maintain lobster trap buoys in such a condition that buoy identifying numbers are clearly readable.

~~(c) Beginning with the 2017-2018 lobster season, no lobster operator permit holder shall possess, use, control, or operate any lobster trap without a valid department issued trap tag and a valid buoy tag supplied by the lobster operator permit holder. The trap tag assigned to the lobster operator permit holder shall be attached to the lobster trap, and have a valid buoy tag attached to the lobster trap buoy. Deployed lobster traps and those possessed by a lobster operator permit holder aboard a vessel shall have a valid department issued trap tag directly attached to the trap. If the information on the trap tag is illegible or incorrect or if the trap tag is missing from the trap for any reason, the trap shall be considered not in compliance, and shall not be used to take spiny lobster for commercial purposes.~~

(1) Lobster trap tags. A lobster operator permit holder shall be issued 300 trap tags for use during that season for each valid lobster operator permit in possession.

~~(2) Lobster buoy tags. Buoy tags shall be supplied by the lobster operator permit holder and shall contain the lobster operator permit holder's permit number and the associated trap tag number that the buoy is affixed to.~~

~~(3)(2) Replacement procedures for catastrophic loss of trap tags.~~

(A) A lobster operator permit holder shall only be eligible to receive replacement trap tags for trap tags lost due to catastrophic loss.

(B) Catastrophic trap tag loss is defined as the cumulative loss of 75 or more trap tags for each valid lobster operator permit due to events beyond the lobster operator permit holder's control such as weather, force majeure and acts of God.

(C) The lobster operator permit holder shall submit ~~to the department's License and Revenue Branch~~ the affidavit signed under penalty of perjury by the lobster operator permit holder and nonrefundable fee for each replacement tag as specified in Section 705 of these regulations ~~signed under penalty of perjury by the lobster operator permit holder to the department's License and Revenue Branch.~~

(D) An affidavit for trap tag replacement due to catastrophic loss, with a description of the factual circumstances consistent with subsection (B) above, shall be approved by the department prior to any replacement trap tags being issued as evidence consistent with subsection (B) above.

(E) Any trap tag reported as lost and subsequently recovered during the season shall be invalid and immediately returned to the department's License and Revenue Branch.

Note: Authority cited: Sections 7075 and 7078, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 8250.5, 9002 and 9010, Fish and Game Code.

**Section 122.2, Title 14, CCR, is added to read:**

**§ 122.2 Pulling Lobster Traps.**

(a) No lobster trap shall be pulled or raised or placed in the water between one hour after sunset to one hour before sunrise.

(b) During the closed season for the taking of spiny lobster:

~~(1) No buoy attached to any trap may be marked in such manner as to identify the trap as a lobster trap, except that legally marked lobster traps may be placed in the water not more than six (6) days before the opening of the season and may remain in the water for not more than six (6) days after the close of the season, if the door or doors to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take spiny lobsters.~~

~~(2) Beginning with the 2017-2018 lobster season, no buoy attached to any trap may be marked in such manner as to identify the trap as a lobster trap, except that legally marked lobster traps may be placed in the water not more than nine (9) days before the opening of the season and may remain in the water for not more than nine (9) days after the close of the season, if the doors to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take spiny lobsters.~~

(c) Lobster traps may be set and baited 24 hours in advance of the opening date of the lobster season if no other attempt is made to take or possess the lobsters.

(d) Trap Service Interval Requirement:

~~(1) Every deployed lobster trap shall be raised, cleaned, serviced and emptied at intervals not to exceed 96 hours, weather conditions at sea permitting.~~

~~(2) Beginning with the 2017-2018 lobster season, every:~~ A deployed lobster trap shall be raised, cleaned of debris, serviced to ensure mechanisms are properly functioning, and emptied at intervals not to exceed 168 hours except that lobster traps are not required to be serviced during the nine day pre and post 9-day pre- and post-season period as described in Section 122.2(b)(2) of these regulations.

(e) No trap shall be abandoned in the waters of this state. Lobster traps not retrieved 14 days after the close of the commercial lobster season shall be considered abandoned.

~~From 15 days after the close of the commercial lobster season through September 15th, an unlimited number of lobster traps may be retrieved by a lobster operator permit holder or a department designee and transported to shore.~~

(f) ~~Beginning with the 2017-2018 lobster season, every~~ By April 15 of each year, every lobster operator permit holder shall submit a trap loss affidavit, as specified in Section 705, for each permit ~~they/he/she holds by April 15 of each year~~ to the address listed on the affidavit.

(1) If a permit is transferred during the season, only the lobster operator permit holder who is in possession of that permit at the end of the season is required to submit the affidavit.

(2) All trap tags shall be retained by each lobster operator permit holder until the beginning of the next lobster season.

(g) The employees of the department may disturb or move any lobster trap at any time while such employees are engaged in the performance of their official duties and may inspect any lobster trap to determine whether it is in compliance with ~~all applicable~~ provisions of the Fish and Game Code and ~~these regulations~~ this Chapter.

(h) ~~Prior to the 2017-2018 lobster season, any person pulling or raising lobster traps and receivers bearing a commercial fishing licenses number other than his/her own must have in his/her possession from the party who holds the permit assigned to said gear written permission to pull the traps, or receivers.~~

(i) ~~Beginning with the 2017-2018 lobster season, no~~ No lobster operator permit holder shall possess, use, control, or operate any lobster traps ~~during the spiny lobster fishing season without a valid trap tag assigned to that lobster operator permit holder or receivers with a trap tag bearing a permit number other than his/her own nor any receivers~~ bearing a commercial fishing license identification number other than ~~their~~ his/her own except:

(1) To retrieve from the ocean and transport to shore lobster trap(s) of another lobster operator permit holder that were lost, damaged, abandoned or otherwise derelict, provided that:

(A) No more than ~~six (6) lost~~ 6 derelict lobster traps may be retrieved per fishing trip, ~~except as provided in subsection (2) below.~~

(B) Lobster from the retrieved lobster trap(s) shall not be retained and shall be returned to the ocean waters immediately.

(C) Immediately upon retrieval of lobster trap(s), the lobster operator permit holder retrieving the traps shall document in the retrieving vessel's log the date and time of trap retrieval, number of retrieved lobster traps, location of retrieval, and retrieved trap tag information.

(D) Any retrieved lobster trap(s) shall be transported to shore during the same fishing trip that retrieval took place.

(2) Under a waiver granted by the department, pulling, servicing, ~~and/or~~ transporting ~~receivers or~~ more than ~~six (6)~~ 6 lobster traps ~~to shore~~ by another lobster operator permit holder is allowed if:

(A) The lobster operator permit holder is unable to ~~service their~~ pull, service or transport his/her traps or receivers due to circumstances beyond the control of the permit holder.

(B) A request for the waiver has been submitted in writing to the department's License and Revenue Branch.

The waiver shall include:

1. Name and permit number of the ~~requesting~~ lobster operator permit holder requesting the waiver;

2. Name and permit number of the ~~retrieving~~ lobster operator permit holder ~~retrieving~~ pulling, servicing or transporting the traps and receivers;

3. Proposed time period and location to conduct ~~trap~~ operations; and

4. Lobster trap tag numbers or number of traps and receivers to be ~~serviced~~; and pulled, serviced or transported.

~~5. Any other related information as requested by the department.~~

~~(C)~~ The department may request other related information prior to granting or denying the waiver.

~~(C)(D)~~ The waiver may include conditions such as time period to conduct ~~retrieval~~ activities, landing prohibitions or any other criteria the department deems necessary.

~~(D)(E)~~ A copy of the waiver approved by the department shall be in the possession of the ~~retrieving~~ lobster operator permit holder when ~~servicing or retrieving~~ pulling, servicing, or transporting the traps and receivers.

~~(E)(F)~~ The ~~retrieving~~ lobster operator permit holder ~~retrieving~~ pulling, servicing, or transporting the traps and receivers may retain lobsters caught in the traps or contained in the receivers unless otherwise specified as a condition of the waiver.

~~(3)~~ From 15 days after the close of the commercial lobster season through September 15, an unlimited number of lobster traps may be retrieved by a lobster operator permit holder or a department designee and transported to shore.

Note: Authority cited: Sections 1050 and 7078, Fish and Game Code. Reference: Sections, 7050, 7055, 7056, 8250.5, 8251, 9002, and 9010, Fish and Game Code.

Section 705, Title 14, CCR, is amended to read:

§ 705. Commercial Fishing Applications, Permits, Tags and Fees.

| (a) Application | Permit<br>Fees (US\$) | Processing<br>Fees (US\$) |
|-----------------|-----------------------|---------------------------|
|-----------------|-----------------------|---------------------------|

[No changes to subsection (a)(1)-(a)(8)(S)]

|                                                                                 |               |
|---------------------------------------------------------------------------------|---------------|
| <del>(T) Lobster Operator Permit<br/>for the 2016-2017 lobster<br/>season</del> | <u>369.75</u> |
|---------------------------------------------------------------------------------|---------------|

|                                                                                                              |               |
|--------------------------------------------------------------------------------------------------------------|---------------|
| <del>(U)(T) Lobster Operator Permit<br/>and Trap Tags beginning with<br/>the 2017-2018 lobster season.</del> | <u>765.25</u> |
|--------------------------------------------------------------------------------------------------------------|---------------|

*(b) Transfer, Upgrade, or Change of Ownership*

*Fees (US\$)*

(1)(A) Lobster Operator Permit Transfer  
Application,  
DFW 1702 (New 2/2016, incorporated by  
reference herein.

500.00

[No changes to subsection (b)(2)-(b)(11)(c)]

*(c) Tags and Miscellaneous*

*Fees (US\$)*

[No changes to subsection (c)(1)-(c)(4)]

(5) Lobster Operator Permit Catastrophic  
Lost Trap Tag Affidavit, DFW 1701 (New  
2/2016), incorporated by reference  
herein, ~~beginning with the 2017-2018  
lobster season.~~

(6) Lobster Operator Permit Catastrophic  
Lost Trap Tag Fee per tag ~~beginning  
with the 2017-2018 lobster season.~~

1.25

(7) End of Season Spiny Lobster Trap  
Loss Reporting Affidavit, DFW 1020  
(New 02/18/16), incorporated by  
reference herein, ~~beginning with the  
2017-2018 lobster season.~~

[No changes to subsection (d)]

Note: Authority cited: Sections 713 and 1050, Fish and Game Code. Reference:  
Sections 713 and 1050, Fish and Game Code.



13

**Commissioners**  
**Eric Sklar, President**  
Saint Helena

**Jacque Hostler-Carmesin, Vice President**  
McKinleyville

**Anthony C. Williams, Member**  
Huntington Beach

**Russell Burns, Member**  
Napa

**Peter Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 28, 2016

### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to Lower Klamath River Basin sport fishing, which will be published in the California Regulatory Notice Register on December 30, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments. Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx>.

**Wade Sinnen, Senior Environmental Scientist, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Mr. Sinnen can be reached by telephone at (707) 822-5119 or by email at [Wade.Sinnen@wildlife.ca.gov](mailto:Wade.Sinnen@wildlife.ca.gov).**

Sincerely,

Caren Woodson  
Associate Governmental Program Analyst

Attachment





## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections: 200, 202, 205, 215, 220, 240, 315, and 316.5 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 215, and 316.5 of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to Klamath River Basin Sport Fishing Regulations.

### **Informative Digest/Policy Statement Overview – Inland Fisheries**

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed through a cooperative system of State, federal, and tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River Basin sport fisheries which are consistent with federal fishery management goals.

Two tribal entities within the Klamath River Basin, the Hoopa Valley Tribe and the Yurok Tribe, maintain fishing rights for ceremonial, subsistence and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations for the river are promulgated by the Hoopa and Yurok tribes.

For the purpose of PFMC mixed-stock fishery modeling and salmon stock assessment, salmon greater than 22 inches are defined as adult salmon (ages 3-5) and salmon less than or equal to 22 inches are defined as grilse salmon (age 2).

### **Klamath River Fall-Run Chinook Salmon**

Klamath River fall-run Chinook Salmon (KRFC) harvest allocations and natural spawning escapement goals are established by the PFMC. The KRFC harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The 2017 KRFC in-river sport fishery allocation recommended by the PFMC is currently unknown. All proposed closures for adult KRFC are designed to ensure sufficient spawning escapement in the Klamath River Basin and equitably distribute harvest while operating within

annual allocations.

### **Klamath River Spring-Run Chinook Salmon**

The Klamath River System also supports Klamath River spring-run Chinook Salmon (KRSC). Naturally produced KRSC are both temporally and spatially separated from KRFC in most cases.

Presently, KRSC stocks are not managed or allocated by the PFMC. The in-river sport fishery is managed by general basin seasons, daily bag limit, and possession limit regulations. KRSC harvest will be monitored on the Lower Klamath River in 2017 and ensuing years by creel survey.

### **KRFC Allocation Management**

The PFMC 2016 allocation for the Klamath River Basin sport harvest was 1,110 adult KRFC. Preseason stock projections of 2017 adult KRFC abundance will not be available from the PFMC until March 2017. The 2017 basin allocation will be recommended by the PFMC in April 2017 and presented to the Commission for adoption prior to its April 2017 meeting.

For public notice requirements, the Department of Fish and Wildlife (Department) recommends the Commission consider an allocation range of 0 – 67,600 adult KRFC in the Klamath River Basin for the river sport fishery. This recommended range encompasses the historical range of the Klamath River Basin allocations and allows the PFMC and Commission to make adjustments during the 2017 regulatory cycle.

The Commission may modify the KRFC in-river sport salmon harvest allocation which is normally 15 percent of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries.

The annual KRFC in-river harvest allocation is split into four geographic areas with subquotas assigned to each. They are as follows:

1. for the main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec – 17 percent of the sport fishery allocation;
2. for the main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth – 50 percent of the sport fishery allocation;
3. for the Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat – 16.5 percent of the sport fishery allocation; and
4. for the Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River -- 16.5 percent of the sport fishery allocation.

The spit area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth) closes to all fishing after 15 percent of the total Klamath River Basin quota has been taken downstream of the Highway 101 bridge.

These geographic areas are based upon the historical distribution of angler effort and ensure equitable harvest of adult KRFC in the upper Klamath River and Trinity River. The subquota system requires the Department to monitor angler harvest of adult KRFC in each geographic area. All areas will be monitored on a real time basis except for the following:

Klamath River upstream of Weitchpec and the Trinity River: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the Klamath River upstream of Weitchpec and in the Trinity River for the 2017 season. The Department has reviewed salmon harvest and run-timing data for these areas. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates historic creel survey data from the Klamath River downstream of Iron Gate Dam to the confluence with the Pacific Ocean and the Trinity River downstream of Lewiston Dam to the confluence with the Klamath River. The HPM is driven by the positive relationship between KRFC harvested in the lower and upper Klamath River and the Trinity River. The HPM will be used by the Department to implement fishing closures to ensure that anglers do not exceed established subquota targets.

### **Current Sport Fishery Management**

The KRFC in-river sport harvest allocation is divided into geographic areas and harvest is monitored under real time subquota management. KRSC in-river sport harvest is managed by general season, daily bag limit, and possession limit regulations.

The Department presently differentiates the two stocks by the following dates:

#### **Klamath River**

1. January 1 through August 14 - General Season KRSC. For purposes of clarity, daily bag and possession limits apply to that section of the Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth.
2. August 15 to December 31 - KRFC quota management.

#### **Trinity River**

1. January 1 through August 31 – General Season KRSC.  
For purposes of clarity, daily bag and possession limits apply to that section of the Trinity River downstream of the Old Lewiston Bridge to the confluence with the South Fork Trinity River.
2. September 1 through December 31 – KRFC quota management.

The daily bag and possession limits apply to both stocks within the same sub-area and time period.

### **Proposed Changes**

No changes are proposed for the general (KRSC) opening and closing season dates, and bag, possession and size limits.

No changes are proposed for the Klamath River spit area.

No changes are proposed for the Blue Creek area.

The following changes to current regulations are proposed:

**KRFC QUOTA MANAGEMENT: Seasons, Bag and Possession Limits**

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2017 Klamath River Basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the subquota has been met.

The proposed open seasons and range of bag and possession limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31
2. Trinity River - September 1 to December 31
3. Bag Limit - [0-4] Chinook Salmon – of which no more than [0-4] fish over 22 inches total length may be retained until the subquota is met, then 0 fish over 22 inches total length.
4. Possession limit - [0-12] Chinook Salmon of which [0-12] fish over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

Necessity: The recommended ranges allow the Commission to make the final adjustments for alignment with the federal 2017 regulatory process. The final KRFC bag and possession limits will align with the final federal regulations to meet biological and fishery allocation goals specified in law or established in the PPMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries.

**OTHER**

Other changes are proposed for clarity and consistency.

**Benefits of the regulations**

It is the objective of this State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State. In addition, it is the objective of this State to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland waters under the jurisdiction and influence of the State. The objectives of this practice include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based Klamath River Basin salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of salmon to ensure their continued existence.

The benefits of the proposed regulations are conformance with federal law, sustainable management of Klamath River Basin fish resources, and promotion of businesses that rely on

sport salmon fishing in the Klamath River Basin.

### **Consistency and Compatibility with State Regulations**

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Sections 200, 202, 205, 315, and 316.5, Fish and Game Code). Commission staff has searched the California Code of Regulations and has found no other State regulations related to sport fishing in the Klamath River Basin.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the DoubleTree by Hilton Hotel Sonoma, One Doubletree Drive, Rhonert Park, California, on Thursday, February 9, 2017 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Thursday, April 13, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on March 29, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 7, 2017. All comments must be received no later than April 13, 2017, at the teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address.

### **Availability of Documents**

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Caren Woodson at the preceding address or phone number. **Wade Sinnen, Senior Environmental Scientist, Department of Fish and Wildlife, phone (707) 822-5119, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal

regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are projected to have minor impact on the net revenues to local businesses servicing sport fishermen. If the 2017 KRFC quota is reduced, visitor spending may correspondingly be reduced and in the absence of the emergence of alternative visitor activities, the drop in spending could induce business contraction. However, this will not likely affect the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (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:
- (c) The proposed regulations range from no fishing of KRFC adult salmon to a Klamath River Basin salmon season similar to 2016. The Commission anticipates some impact on the creation or elimination of jobs in California. The potential employment impacts range from 0 to 45 jobs which are not expected to create, eliminate or expand businesses in California. The Commission anticipates impacts on the creation, elimination or expansion of businesses in California ranging from no impact

to reduced revenues to approximately 30 businesses that serve sport fishing activities. However, the possibility of growth of businesses to serve substitute activities exists. Adverse impacts to jobs and/or businesses would be less if fishing of steelhead and grilse KRFC salmon is permitted than under a complete closure to all fishing. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed action is to increase sustainability in fishable salmon stocks and, consequently promoting the long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon sport fishery encourages a healthy outdoor activity and the consumption of a nutritious food.

The Commission anticipates benefits to the environment by the sustainable management of California's salmonid resources.

The Commission does not anticipate any benefits to worker safety because the proposed action does not affect working conditions.

(c) **Cost Impacts on a Representative Private Person or Business:**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(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.**

**Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).



### **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: December 13, 2016

Valerie Termini  
Executive Director

14

**Commissioners**  
**Eric Sklar, President**  
Saint Helena

**Jacque Hostler-Carmesin, Vice President**  
McKinleyville

**Anthony C. Williams, Member**  
Huntington Beach

**Russell Burns, Member**  
Napa

**Peter Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
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(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 28, 2016

### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to subsection (c) of Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon sport fishing, which will be published in the California Regulatory Notice Register on December 30, 2015.

This is the first of two notices relating to ocean salmon sport fishing and pertains to the ocean salmon sport fishing regulations for May-November, 2017. A separate notice pertaining to the April 2017 ocean salmon sport fishing regulations will also be published in the California Regulatory Notice Register on December 30, 2015.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx>.

**Barry Miller, Environmental Scientist, Marine Region, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Mr. Miller can be reached at (707) 576-2860 or [Barry.Miller@wildlife.ca.gov](mailto:Barry.Miller@wildlife.ca.gov).**

Sincerely,

Caren Woodson  
Associate Governmental Program Analyst

Attachment



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**TITLE 14. Fish and Game Commission**  
**Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections: 200, 202, 205, 220, 240, 316.5 and 2084 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend subsection (d) of Section 27.80, Title 14, California Code of Regulations, relating to Ocean Salmon Recreational Fishing on and after May 1, 2017.

**Informative Digest/Policy Statement Overview – Inland Fisheries**

The Pacific Fishery Management Council (PFMC) coordinates west coast management of recreational and commercial ocean salmon fisheries in the federal fishery management zone (three to 200 miles offshore) along the coasts of Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS) effective on May 1 of each year.

California's recreational salmon fishing regulations need to conform to the federal regulations to achieve optimum yield in California under the federal Salmon Fishery Management Plan. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational fishery in State waters (zero to three miles offshore) which are consistent with these federal fishery management goals.

**Present Regulations**

Regulations for 2016 [subsections 27.80(c) and (d)] authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 16 through May 31, June 16 through June 30, July 16 through August 16, and September 1 through September 5, 2016. Between Horse Mountain and Point Arena, ocean salmon recreational fishing was authorized seven days per week from April 2 to November 13, 2016. Between Point Arena and Pigeon Point, ocean salmon recreational fishing was authorized seven days per week from April 2 to October 31, 2016. Between Pigeon Point and Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 2 to July 15, 2016. For areas south of Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 2 to May 31, 2016. The bag limit for all areas in 2016 was two fish per day (all species except coho). The areas north of Point Arena had a minimum size limit of 20 inches total length. The area between Point Arena and Pigeon Point had a minimum size limit of 24 inches total length through April 30, 2016 and 20 inches total length thereafter. Areas south of Pigeon Point had a minimum size limit of 24 inches total length. Since the existing regulations pertained only to the 2016 season, amendment of these regulations is essential to allow for any fishing in State waters during 2017.

**Proposed Regulations**

Two separate Commission actions are necessary to conform State regulations to federal rules that will apply in 2017. This proposed regulation would amend subsection 27.80(d), establishing salmon fishing regulations for May 1 through the end of 2017. Recreational salmon fishing regulations for the month of April 2017 will be considered in a separate

rulemaking action, tentatively scheduled for adoption in March 2017.

For public notice purposes and to facilitate Commission discussion, the Department of Fish and Wildlife is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect on or after May 1, 2017. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters.

1. North of Horse Mountain and in Humboldt Bay: The season, if any, may occur within the range of May 1 through September 30, 2017.
2. Between Horse Mountain and Pigeon Point: The season, if any, may occur within the range of May 1 to November 12, 2017.
3. South of Pigeon Point: The season, if any, may occur within the range of May 1 to October 1, 2017.
4. For all areas, the proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length.

The exact opening and closing dates, along with daily bag limit, minimum size, and days of the week open will be determined in April 2017 by the Commission considering federal regulations and may be different for each subarea.

#### **Benefits of the regulations**

The benefits of the proposed regulations are concurrence with federal law, sustainable management of ocean salmon resources, and promotion of businesses that rely on recreational ocean salmon fishing.

#### **Consistency and Compatibility with State Regulations**

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The legislature has delegated authority to the Commission to adopt sport fishing regulations in general (Sections 200, 202 and 205, Fish and Game Code) and salmon sport fishing regulations specifically (Section 316.5, Fish and Game Code). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of salmon in the ocean.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the DoubleTree by Hilton Hotel Sonoma, One Doubletree Drive, Rhonert Park, California, on Thursday, February 9, 2017 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Thursday, April 13, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on March 29, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 7, 2017. All comments must be received no later than April 13, 2017, at the teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address.

### **Availability of Documents**

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Caren Woodson at the preceding address or phone number. **Barry Miller, Environmental Scientist, Department of Fish and Wildlife, phone (707) 576-2860, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

The potential for significant statewide adverse economic impacts that might result from the

proposed regulatory action has been assessed, and the following initial 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:

Although the recommendations of the PPMC for the 2017 ocean salmon season are unknown at this time, the Department anticipates that recreational salmon fishing effort will be similar to the 2015 season. For the purpose of evaluating potential economic impacts of the 2017 ocean salmon regulations, the Commission analyzed possible reductions in ocean salmon recreational effort ranging from 0-percent (no change) to a 5-percent and a 10-percent reduction from the number of angling trips in 2015. The base year used for estimating the 2017 economic impacts is the 2015 salmon season, the latest full year of economic data.

The projections conducted for 2017, representing 100-percent (82,000 angler days), and 95-percent (77,900 angler days), and 90-percent (74,000) levels of ocean salmon angling effort, are not likely to precipitate significant statewide adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Additionally, any reduction in angling opportunity would be undertaken with the intent of ensuring the health of the resource and thus also preventing longer term adverse economic impacts.

Data from the Department indicate that during the 2015 salmon season, recreational fishermen participated in 82,000 angler days of ocean salmon fishing and generated an estimated \$13.7 million (2016\$) in total economic output to the State. The projected levels of fishing effort for the 2017 salmon season are 82,000 angler days, 78,000 angler days, and 73,800 angler days, equivalent to 100-, 95-, and 90-percent levels of effort, respectively. With these projected 2017 levels of angler effort, the associated fishing expenditures by fishermen would generate an estimated \$13.7 million, \$13 million and \$12.3 million (2016\$) in total economic output for the State, respectively. Thus, relative to the 2015 salmon season, the total incremental effects (direct, indirect, and induced) of the 2017 projections on State economic output range from no change (the same \$13.7 million); a 5-percent decrease (-\$684 thousand); to a 10-percent decrease (-\$1.4 million) in total economic output from the recreational ocean salmon fishery.

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:

Approximately 111 jobs were indirectly supported by recreational ocean salmon angling during the 2015 salmon season. Thus, relative to the 2015 salmon season, the 2017 projections (100-, 95-, and 90-percent levels of effort) represent potential

incremental effects on employment ranging from zero new jobs (no change) to a loss of 6 to 11 jobs statewide; the potential incremental effects on the creation or elimination of businesses is anticipated to range from no impact to insignificant impacts on the elimination of businesses in the state. A 10-percent decrease in angling effort may have minimal impacts in some localized areas that lack industry diversification and have a heavy reliance on recreational fishing and tourism; and potential incremental effects on the expansion of businesses range from no effect to the minor contraction of some business activities in the recreational ocean salmon fishing areas.

The Commission anticipates benefits to the health and welfare of California residents. Salmon sport fishing contributes to increased mental health of its practitioners, provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of California's natural resources.

The Commission anticipates benefits to the State's environment in the sustainable management of salmon resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational ocean salmon fishing.

The Commission does not anticipate benefits to worker safety.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(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.



### **Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

### **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: December 13, 2016

Valerie Termini  
Executive Director

15

**Commissioners**  
**Eric Sklar, President**  
Saint Helena

**Jacque Hostler-Carmesin, Vice President**  
McKinleyville

**Anthony C. Williams, Member**  
Huntington Beach

**Russell Burns, Member**  
Napa

**Peter Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 28, 2016

### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to subsection (c) of Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon sport fishing, which will be published in the California Regulatory Notice Register on December 30, 2015.

This is the first of two notices relating to ocean salmon sport fishing and pertains to the ocean salmon sport fishing regulations for April 2016. A separate notice pertaining to the remainder of the 2016 ocean salmon sport fishing regulations will also be published in the California Regulatory Notice Register on December 30, 2015.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx>.

**Barry Miller, Environmental Scientist, Marine Region, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Mr. Miller can be reached at (707) 576-2860 or [Barry.Miller@wildlife.ca.gov](mailto:Barry.Miller@wildlife.ca.gov).**

Sincerely,

Caren Woodson  
Associate Governmental Program Analyst

Attachment



## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections: 200, 202, 205, 220, 240, 316.5 and 2084 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend subsection (c) of Section 27.80, Title 14, California Code of Regulations, relating to Ocean Salmon Recreational Fishing – April 2017 Season.

### **Informative Digest/Policy Statement Overview – Inland Fisheries**

The Pacific Fishery Management Council (PFMC) coordinates west coast management of recreational and commercial ocean salmon fisheries in the federal fishery management zone (three to 200 miles offshore) along the coasts of Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS) effective on May 1 of each year.

California's recreational salmon fishing regulations need to conform to the federal regulations to achieve optimum yield in California under the federal Salmon Fishery Management Plan. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational fishery in State waters (zero to three miles offshore) which are consistent with these federal fishery management goals.

#### **Present Regulations**

Regulations for 2016 [subsections 27.80(c) and (d)] authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 16 through May 31, June 16 through June 30, July 16 through August 16, and September 1 through September 5, 2016. Between Horse Mountain and Point Arena, ocean salmon recreational fishing was authorized seven days per week from April 2 to November 13, 2016. Between Point Arena and Pigeon Point, ocean salmon recreational fishing was authorized seven days per week from April 2 to October 31, 2016. Between Pigeon Point and Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 2 to July 15, 2016. For areas south of Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 2 to May 31, 2016. The bag limit for all areas in 2016 was two fish per day (all species except coho). The areas north of Point Arena had a minimum size limit of 20 inches total length. The area between Point Arena and Pigeon Point had a minimum size limit of 24 inches total length through April 30, 2016 and 20 inches total length thereafter. Areas south of Pigeon Point had a minimum size limit of 24 inches total length. Since the existing regulations pertained only to the 2016 season, amendment of these regulations is essential to allow for any fishing in State waters during 2017.

#### **Proposed Regulations**

Two separate Commission actions are necessary to conform State regulations to federal rules that will apply in 2017. The first action would amend subsection 27.80(c), establishing salmon fishing regulations for the month of April 2017 consistent with federal regulations for the federal fishery management zone off California. Recreational salmon fishing regulations for May 1

through the end of 2017 will be considered in the second rulemaking action, tentatively scheduled for adoption in April 2017.

For public notice purposes and to facilitate Commission discussion, the Department of Fish and Wildlife (Department) is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect April 1 through April 30, 2017. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters shortly after the federal rules are promulgated.

- (1) North of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during April. The remainder of the 2017 season will be decided in April by the PPMC and Commission and the section will be amended pursuant to the regulatory process.
- (2) South of Horse Mountain: The season, if any, may open on a date within the range of April 1 through April 30, 2017. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to each area for April 2017 and may be different for each area.

#### **Benefits of the regulations**

The benefits of the proposed regulations are concurrence with federal law, sustainable management of ocean salmon resources, and promotion of businesses that rely on recreational ocean salmon fishing.

#### **Consistency and Compatibility with State Regulations**

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The legislature has delegated authority to the Commission to adopt sport fishing regulations in general (Sections 200, 202 and 205, Fish and Game Code) and salmon sport fishing regulations specifically (Section 316.5, Fish and Game Code). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of salmon in the ocean.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the DoubleTree by Hilton Hotel Sonoma, One Doubletree Drive, Rhonert Park, California, on Thursday, February 9, 2017 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be teleconference originating in the Fish and

Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Wednesday, March 15, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on March 2, 2017 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on March 10, 2017. All comments must be received no later than March 15, 2017, at the teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address.

### **Availability of Documents**

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Caren Woodson at the preceding address or phone number. **Barry Miller, Environmental Scientist, Department of Fish and Wildlife, phone (707) 576-2860, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### **Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

The proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Department anticipates status quo fishing levels for April 2017 as compared to the April 2016 ocean salmon sport fishing season.

- (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 that the proposed regulations will have any impact on the creation or elimination of jobs, the creation or elimination of businesses or the expansion of businesses in California because no changes in fishing activity levels are expected .

The Commission anticipates benefits to the health and welfare of California residents. Salmon sport fishing contributes to increased mental health of its practitioners, provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of California's natural resources.

The Commission anticipates benefits to the State's environment in the sustainable management of salmon resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational ocean salmon fishing.

The Commission does not anticipate benefits to worker safety.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (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.

#### **Effect on Small Business**

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

#### **Consideration of Alternatives**

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### **FISH AND GAME COMMISSION**

Dated: December 13, 2016

Valerie Termini  
Executive Director





/b

**Commissioners**  
**Eric Sklar, President**

Saint Helena

**Jacque Hostler-Carmesin, Vice President**  
McKinleyville

**Anthony C. Williams, Member**  
Huntington Beach

**Russell E. Burns, Member**  
Napa

**Peter S. Silva, Member**  
Chula Vista

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 28, 2016

### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to Section 28.20, Title 14, California Code of Regulations, relating to Pacific halibut sport fishing, which will be published in the California Regulatory Notice Register on December 30, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

**Melanie Parker, Environmental Scientist, Marine Region, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Ms. Parker can be reached at (831) 649-2814 or [Melanie.Parker@wildlife.ca.gov](mailto:Melanie.Parker@wildlife.ca.gov).**

Sincerely,

Sherrie Fonbuena  
Associate Governmental Program Analyst

Attachment



## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 219, 220, 240 and 316 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203.1, 205, 207, 215, 219, 220 and 316 of said Code; 50 Code of Federal Regulation (CFR) Part 300, Subpart E; and 50 CFR 300.66, proposes to amend Section 28.20, Title 14, California Code of Regulations (CCR), relating to recreational fishing for Pacific halibut.

### **Informative Digest/Policy Statement Overview**

Pacific halibut is internationally managed under the authority of the Northern Pacific Halibut Act of 1982 between the United States of America and Canada. Pacific halibut along the United States west coast is jointly managed through the International Pacific Halibut Commission (IPHC), Pacific Fishery Management Council (PFMC), and the National Marine Fisheries Service (NMFS), in conjunction with the west coast state agencies. The PFMC coordinates west coast management of all recreational and commercial Pacific halibut fisheries in United States waters through the Pacific Halibut Catch Sharing Plan (CSP), which constitutes a framework for recommending annual management measures. NMFS is responsible for specifying the final CSP language and management measures in federal regulations (50 CFR Part 300, Subpart E and the Federal Register) and noticing them on its halibut telephone hotline. Federal regulations for Pacific halibut are applicable in federal waters (three to 200 miles offshore) off Washington, Oregon, and California. Each state adjacent to federal waters adopts corresponding fishery regulations for their own waters (zero to three miles offshore).

For consistency, the Commission routinely adopts regulations to bring State law into conformance with federal and international law for Pacific halibut.

At its November 2016 meeting, the PFMC recommended changes to the 2017 CSP and recreational Pacific halibut fishery in California. The November PFMC regulatory recommendation and NMFS final rule will be considered by the Commission when it takes its own regulatory action to establish the State's recreational Pacific halibut fishery regulations for 2017.

### **Summary of Proposed Amendments**

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with PFMC recommendations and the CSP for Pacific halibut regulations in 2017. This approach will allow the Commission to adopt State recreational Pacific halibut regulations to conform in a timely manner to those taking effect in federal ocean waters on or before May 1, 2017.

The proposed regulatory changes modify Pacific halibut regulations to allow for timely conformance to federal fisheries regulations and inseason changes. The proposed regulatory changes would modify the seasons to include a range from May 1 to October 31 which may include periodic closures, and update the reference to the Federal Register specifying the 2017 federal quota amount. The final regulation will conform to the season established by federal regulations in May 2017.

### Benefits of the Proposed Regulations

The benefits of the proposed regulations are: consistency with federal regulations, the sustainable management of California's Pacific halibut resources, and health and welfare of anglers.

### Evaluation of Consistency and Compatibility with Existing State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202, and 205) and Pacific halibut fishing regulations specifically (Fish and Game Code, Section 316). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the CCR and has found no other State regulations related to the recreational take of Pacific halibut.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held on Thursday, February 9, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard, at the DoubleTree by Hilton Hotel Sonoma, One DoubleTree Drive, Rohnert Park, California.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a teleconference hearing originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Thursday, April 13, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard. Interested persons may also participate at the following locations:

- Department of Fish and Wildlife, Conference Room, 50 Ericson Court, Arcata, California;
- Department of Fish and Wildlife, Conference Room, 4665 Lampson Avenue, Los Alamitos, California; and
- Department of Fish and Wildlife Conference Room, 7329 Silverado Trail, Napa, California.

Written comments may be submitted by mail to the Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed or emailed to the Commission office, must be received before 12:00 noon on April 7, 2017. All comments must be received no later than April 13, 2017, at one of the teleconference hearing locations listed above. If you would like copies of any modifications to this proposal, please include your name and mailing address.

### Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission's website at [www.fgc.ca.gov](http://www.fgc.ca.gov). The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Sherrie Fonbuena at the preceding address or phone number. **Melanie Parker, Environmental Scientist, Department of Fish and Wildlife, phone**

**(831) 649-2814, email [Melanie.Parker@wildlife.ca.gov](mailto:Melanie.Parker@wildlife.ca.gov), has been designated to respond to questions on the substance of the proposed regulations.**

**Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

**Impact of Regulatory Action/Results of the Economic Impact Assessment**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action does not substantially alter existing conditions.

- (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 in California, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities to participate in sport fisheries fosters conservation through education and appreciation of fish and wildlife.

The Commission anticipates benefits to the environment by the sustainable management of California's Pacific halibut resources.

The Commission does not anticipate any benefits to worker safety.

Additional benefits of the proposed regulations are consistency with federal regulations and promotion of businesses that rely on recreational Pacific halibut fishing.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: December 20, 2016

Valerie Termini  
Executive Director