



# STANISLAUS COUNTY

## FISH AND WILDLIFE COMMITTEE



3800 CORNUCOPIA WAY, SUITE C, MODESTO, CALIFORNIA 95358

**THURSDAY, January 28, 2016**

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

### **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:**

#### **Correspondence:**

1. Notice of regulatory action relative to listing the gray wolf as endangered under the California Endangered Species Act. *Fish and Game Commission, 10/22/15*
2. Notice of proposal for a 90 day extension of emergency action for fisheries at risk due to drought conditions. *Fish and Game Commission, 12/11/15*
3. A revised roadmap for recovery; service seeks public review of new draft giant garter snake recovery plan. *Fish and Wildlife, 12/28/15*
4. Notice of proposed regulatory action relating to mammal regulations for the 2016-2017 seasons. *Fish and Game Commission, 1/8/16*

#### **Agenda Items:**

1. Public Comment(s)
2. Approval of October 22, 2015 Meeting Minutes
3. Issue a certificate of appreciation to Tim Galas, Fish and Game Warden, for 25 years of contributions to fish and wildlife in Stanislaus County. FW Members
4. Wildlife Management Report Cristen Langner, DFG
5. Fishery Report Steve Tsao, DFG
6. Wildlife Enforcement Report Phil McKay, DFG
7. Wood Duck Report
8. Approval to review, discuss and finalize changes on the Committee's Fund Procedures
  - a. Include proof of mileage reimbursements; members to discuss how proof may be submitted.
9. Approval to review, discuss and finalize changes to the Fund Application
  - a. Suggestion: Add a numerical reference to the fund application; "Meeting Date" added to the bottom of the form as reference. This is to be documented as the numerical reference in the account budget.
10. Old Business
  - a. Frank Raines Guzzlers
11. Committee Comments

**Adjourn:** Next meeting – Thursday, April 28, 2016 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.)

Agendas can also be found online at <http://www.stancounty.com/er/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 22, 2015 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  
Red Bartley, D1  
Ken Meidl, D4  
Jim Atherstone, D3  
Bob Bashaw, D5\*  
Anthony Maxwell, D2  
(\*present by telephone conference)

#### STATE FISH & WILDLIFE REPRESENTATIVE:

Phil McKay

#### PARKS & RECREATION STAFF PRESENT:

Mae Song

#### EXCUSED/ABSENT:

Jason Guignard, D1  
Ed Channing, ALT  
Dave Doubledee, ALT  
Cody Johnsen, ALT  
Don Vanwey, ALT

#### GUESTS PRESENT:

Trina Walley

#### A. CALL TO ORDER & INTRODUCTIONS

Ed Ayers called the meeting to order and those in attendance introduced themselves.

#### B. REQUESTS FOR FUNDS/PROJECT UPDATES

The request for funds in the amount NTE \$953.56 to purchase calendars for the Stanislaus River Salmon Festival, submitted by East Stanislaus Resource Conservation District, was approved upon motion and second, noting a concern in the lack of various financial sponsorship, and the asking group's stand on non-native species. This will be the 7<sup>th</sup> annual festival. The event is a free family event held in the Knights Ferry recreation area. There will be exhibits for kids and family. The calendar is an educational outreach effort in collaboration with the local schools. Within the calendar pages are the kids' winning art entries. The organization has increased their outreach efforts this year on donations. Last year's festival attendees increased at approximately 3,000.

#### REPORTER & ACTIONS

Trina Walley

Bashaw,  
Atherstone,  
unanimous approval

#### C. CORRESPONDENCE

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

#### ACTIONS

**D. PUBLIC COMMENTS****ACTIONS/REPORTER**

No comment was received.

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

Minutes for the July 23, 2015 meeting were approved upon motion and second as written.

*Bartley, Maxwell,  
unanimous approval*

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

California Fish and Wildlife have been working on getting the tri-colored blackbird on the State's endangered specie list, including efforts in saving colonized areas on farmlands. The species is currently protected under federal regulations. A few tracked elk were reported killed. Black tail bucks were spotted near the Los Banos area.

*Phil McKay for  
Cristen Langner*

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

1. *The water hyacinth is still very bad in the Tuolumne and San Joaquin Rivers, and is likely having an effect on the lower number of fish returning to the Tuolumne.*

*Ed Ayers for Jason  
Guignard*

*The current Salmon counts as of October 20<sup>th</sup> are:*

- *Stanislaus – 427*
- *Tuolumne – 5*

2. Spots of the rivers were reported blocked off.

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

1. The State Commission had made regulations uniform to allow the take of two hatchery rainbow trout with healed adipose fin. The problem with the regulation is that some are not aware of what an adipose fin is nor do they know what a healed adipose fin looks like. Efforts now are to revert back to a zero trout along the stretch of the river. Keeping any trout would not be allowed but for a catch and release. The goal is to protect the wild fish population. Salmon possession is also prohibited.
2. A recent felony case found illegal deer kills collected through the years within a property out in La Grange.

*Phil McKay*

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

The Committee is working with the California Waterfowl Association on wood duck boxes. Last year's group had about twenty boxes with two hatches. Members were in consensus to give away any wood duck boxes to those interested.

*Ed Ayers*

**J. COMMITTEE COMMENTS****ACTIONS & REPORTER**

1. The issuance of the appreciation certificate to Mr. Galas was tabled for the next meeting.
2. Members of the Committee reviewed and questioned item descriptions on the fund account report. Fund procedures will be reviewed again for possible changes to whom the check would be issued to and for more specific descriptions to each transaction. The Committee would like to review, discuss and make changes to the fund procedures in the next meeting. This item will be added to the agenda in January. The Committee also suggested numbering the application and associating it with the account's line items for cross referencing purposes. The approval meeting date was suggested as the referencing number to be recorded in the budget sheet.
3. Some members of the Committee asked that the telephone conference be set up for the next meeting.
4. Tuolumne River Trust is having a community restoration workday this Saturday from 9:00 a.m. to noon and on November 21<sup>st</sup> with same time. The group will be planting terrestrial habitat along the river. Contact Meg Gonzales at 209-236-0330 or 209-613-2672 for more information.

*Ed Ayers*

*Red Bartley*

*Jim Atherstone*

**K. ADJOURNMENT & NEXT MEETING**

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

*Maxwell, Bartley,  
unanimous approval*

**Thursday, January 28, 2016 at 4:00 p.m.  
Conference Room, 2<sup>nd</sup> Floor  
3800 Cornucopia Way, Modesto**

*Prepared By: Mae Song, Fish and Wildlife Secretary*

*209-525-6723*

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**Commissioners**  
**Jack Baylis, President**  
Los Angeles  
**Jim Kellogg, Vice President**  
Discovery Bay  
**Jacque Hostler-Carmesin, Member**  
McKinleyville  
**Eric Sklar, Member**  
Saint Helena  
**Anthony C. Williams, Member**  
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STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

**Sonke Mastrup, Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899

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

October 22, 2015

BOARD OF SUPERVISORS  
2015 OCT 26 A 10:20

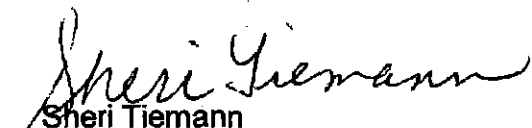
### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action resulting from the Commission's June 4, 2014, meeting, when it made a finding pursuant to Section 2075.5, Fish and Game Code, that listing the gray wolf 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 October 23, 2015.

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

**Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, phone (916) 445-0411, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

  
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 240, 2070, 2075.5 and 2076.5, of the Fish and Game Code, and to implement, interpret or make specific sections 1755, 2055, 2062, 2067, 2070, 2072.7, 2074.6, 2075.5, 2077, 2080, 2081 and 2835, of said Code, proposes to amend Section 670.5, Title 14, California Code of Regulations, relating to Animals of California Declared to Be Endangered or Threatened.

**Informative Digest/Policy Statement Overview**

Section 670.5 of Title 14, CCR, provides a list, established by the California Fish and Game Commission (Commission), of animals designated as endangered or threatened in California. The Commission has the authority to add or remove species from this list if it finds that the action is warranted.

At its June 4, 2014 meeting in Fortuna, California, the Commission made a finding that gray wolf warrants listing pursuant to the California Endangered Species Act (CESA). Specifically, the Commission determined that gray wolf (*Canis lupus*) should be listed as an endangered species.

The Commission therefore proposes to amend Section 670.5 of Title 14, CCR, to add gray wolf to the list of endangered species.

This proposal is based upon the documentation of threats to gray wolf to the point that it meets the criteria for listing by the Commission as set forth in the CESA. The Commission is fulfilling its statutory obligation in making this proposal which, if adopted, would afford gray wolf in California with the recognition and protection available under CESA.

**EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:**

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the 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 establish a list of endangered species and a list of threatened species (Fish and Game Code Section 2070). Commission staff has searched the CCR and has found that the proposed regulation is 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 at the Town and Country Resort & Convention Center, 500 Hotel Circle North, San Diego, California, on December 10, 2015, at 8 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 November 24, 2015, at the address given below, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed or e-mailed to the Commission office, must be received before 5:00 p.m. on December 7, 2015. All comments must be received no later than December 10, 2015, at the hearing in San Diego, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is

based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, 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 Sonke Mastrup or Sheri Tiemann (back-up contact) at the preceding address or phone number. **Dr. Eric Loft, Chief of the Wildlife Branch, Department of Fish and Wildlife, phone (916) 445-0411, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission 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 Analysis

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 CESA statutes 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.

The CESA listing process 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 that listing is warranted are in apparent conflict with Section 11346.3, which requires an agency to consider economic impacts of its proposed regulations.

Since the finding portion of CESA is silent as to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 requires the preparation of an 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 gray wolf as endangered will subject the species to the provisions of CESA. This act prohibits take and possession except as may be permitted by the Department.

Presently the gray wolf is listed as endangered throughout portions of its range, including California, under the federal Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq.*) (ESA). Wolves that enter California are therefore protected by the ESA. Under the ESA, the U.S. Fish and Wildlife Service has lead responsibility for wolves in California.

For species listed as endangered or threatened under the ESA, activities that result in "take" of the species are prohibited. The ESA defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harass is further defined as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering" (50 CFR 17.3).

As long as the gray wolf remains federally listed, concurrent listing under the CESA, should not result in a significantly greater economic impact. As a result of the federal or State listing, the economic impacts on commercial timber and other industries' whose activities occur near wolf den or rendezvous sites could be significant. To avoid prohibited take under CESA and ESA, may require consultation with the Department and federal counterparts as to the timing of activities and potentially incidental take permitting. Based on these considerations, the Commission finds that the amendment of this regulation may have a significant adverse economic impact on business.

The Commission has made an initial determination that the amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:



- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

In most cases, conservation measures implemented by the Department for newly listed endangered species have relatively little effect on members of the public. That effect, if any, usually arises from requiring persons to avoid any take of endangered species, or implementing the conditions of an incidental take permit. Fish and Game Code Section 2081(b) addresses the requirements for an incidental take permit:

- Take must be incidental to an otherwise lawful activity.
- Impacts of authorized take must be minimized.
- Impacts of the authorized take must be "fully mitigated."
- The permit applicant must ensure adequate funding to implement the measures required for minimizing and fully mitigating the impacts of authorized take, and for monitoring compliance with and effectiveness of those measures.
- A permit cannot be issued if the Department determines that issuance of the permit will jeopardize the continued existence of the species.

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 the California Environmental Quality Act ("CEQA"). CEQA currently requires private applicants undertaking projects subject to CEQA to consider *de facto* endangered or threatened species to be subject to the same protection under CEQA as though they are already listed by the Commission in Section 670.5 of Title 14, CCR (CEQA Guidelines, Section 15380).

- (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:

If the potentially significant economic impact identified above occurs, there could be an adverse impact on new or existing jobs, an adverse impact on creation of new businesses or elimination of existing businesses, and an adverse impact on business expansion. The magnitude of these impacts will depend on the extent to which commercial activities result in take of gray wolf, and the costs of minimizing and mitigating for that take. The Commission does not anticipate benefits to the health and welfare of California residents or to worker safety. The Commission anticipates benefits to the environment by protecting the gray wolf under CESA.

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

A representative private person or business may experience economic impacts as described in section (a) above.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

As a project applicant, a state agency may realize costs associated with projects involving the incidental take of gray wolf as described in section (a) above.

The proposed regulatory change is not expected to significantly affect federal funding to the State, but there could be an increase in the likelihood that State and federal land and resource management agencies would allocate funds to the State for protection and recovery actions.

(e) **Nondiscretionary Costs/Savings to Local Agencies:**

As a project applicant, a local agency may realize costs associated with projects involving the incidental take of gray wolf as described in section (a) above.

(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

Sonke Mastrup  
Executive Director

Dated: October 9, 2015

**Commissioners**  
**Jack Baylis**, President  
Los Angeles  
**Jim Kellogg**, Vice President  
Discovery Bay  
**Richard Rogers**, Member  
Santa Barbara  
**Michael Sutton**, Member  
Monterey  
**Jacque Hostler-Carmesin**, Member  
McKinleyville

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899

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

January 8, 2016

### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to amending sections 265, 353, 360, 361, 362, 363, 364, 364.1 and 472; and adding Section 708.18, Title 14, California Code of Regulations, relating to mammal regulations for the 2016-2017 seasons, which will be published in the California Regulatory Notice Register on January 8, 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 [www.fgc.ca.gov](http://www.fgc.ca.gov).

**Mr. Craig Stowers, Wildlife Branch, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

  
Jen D. Snellstrom  
Associate Governmental Program Analyst

Attachment

2016 JAN -7 A 10:14  
BOARD OF SUPERVISORS

**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, 207, 3960, 3960.2, 3960.4 and 4756 of said Code, proposes to amend sections 265, 353, 360, 361, 362, 363, 364, and 364.1; and add section 708.18 Title 14, California Code of Regulations (CCR), relating to Mammal regulations for the 2016-2017 seasons.

**Informative Digest/Policy Statement Overview**

**265**

Amend Section 265, Title 14, CCR, by deleting subsections (d)(1) and (d)(2). The current regulations prohibit the use of treeing switches and GPS collar equipment for dogs used in the taking of mammals. Recent changes to statutes have restricted the use of dogs by hunters to only the taking of wild pigs and deer. The prohibition on the use of treeing switches is therefore unnecessary. Allowing the use of GPS collar equipment will improve a hunter's ability to find and retrieve downed game and lost dogs.

**353**

Amend Section 353, Title 14, California Code of Regulations (CCR), Methods Authorized for Taking Big Game. The purpose of the proposed amendments is to specifically require compliance with sections 353 and 250.1 when taking big game, and to clarify which cartridges may be used by defining "softnose or expanding projectile."

The current regulations in Section 353, Title 14, CCR, provide method of take restrictions for big game using centerfire cartridges in rifles, pistols and revolvers. The projectiles used in these firearms are required to be "softnose or expanding." However, these words are not defined in the regulation. While "softnose or expanding" is commonly accepted from the standpoint of bullet design and trade industry terminology, some have suggested that it could include frangible bullets. The lack of distinction between projectile types is confusing to hunters and difficult to interpret by law enforcement. Furthermore, frangible bullets are not an efficient and effective means to take big game.

The proposed regulation changes are as follows:

- 1) Add clause to subsection 353(a) specifically making it unlawful to use methods of take or projectiles for big game other than what is authorized in Sections 250.1 and 353;
- 2) Add a new subsection 353(b)(1) to define "softnose or expanding projectile" based upon design and common accepted terminology of mushrooming, bullet diameter increase and bullet weight retention; and
- 3) Add a new subsection 353(b)(2) to clarify that "frangible" bullets are not softnose or expanding projectiles.

**360(a)**

Existing regulations provide for the number of license tags available for deer in the A, B, C, and D Zones. This regulatory proposal changes the number of tags for all existing zones to a series of ranges presented in the table below. These ranges are necessary because the final number of tags cannot be determined until spring herd data are collected in March/April. Because various environmental factors including 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(a) A, B, C, and D Zone Hunts - Tag Allocations</b>			
§	Zone	Current 2015	Proposed 2016 [Range]
(1)	A	65,000	30,000-65,000
(2)	B	35,000	35,000-65,000
(3)	C	8,150	5,000-15,000
(4)	D3-5	33,000	30,000-40,000
(5)	D-6	10,000	6,000-16,000
(6)	D-7	9,000	4,000-10,000
(7)	D-8	8,000	5,000-10,000
(8)	D-9	2,000	1,000-2,500
(9)	D-10	700	400-800
(10)	D-11	5,500	2,500-6,000
(11)	D-12	950	100-1,500
(12)	D-13	4,000	2,000-5,000
(13)	D-14	3,000	2,000-3,500
(14)	D-15	1,500	500-2,000
(15)	D-16	3,000	1,000-3,500
(16)	D-17	500	100-800
(17)	D-19	1,500	500-2,000

**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 - Tag Allocations</b>			
§	Zone	Current 2015	Proposed 2016 [Range]
(1)	X-1	775	500-6,000
(2)	X-2	160	50-500
(3)	X-3a	315	100-1,200
(4)	X-3b	795	200-3,000

<b>Deer: § 360(b) X-Zone Hunts - Tag Allocations</b>			
<b>§</b>	<b>Zone</b>	<b>Current 2015</b>	<b>Proposed 2016 [Range]</b>
(5)	X-4	435	100-1,200
(6)	X-5a	75	25-200
(7)	X-5b	50	50-500
(8)	X-6a	320	100-1,200
(9)	X-6b	305	100-1,200
(10)	X-7a	225	50-500
(11)	X-7b	135	25-200
(12)	X-8	210	100-750
(13)	X-9a	650	100-1,200
(14)	X-9b	325	100-600
(15)	X-9c	325	100-600
(16)	X-10	400	100-600
(17)	X-12	680	100-1,200

**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 3 and continue for two (2) consecutive days and reopen on October 10 and continue for three (3) consecutive days, inclusive of the Columbus Day holiday, in order to accommodate for Base operations and other hunt opportunities. The proposal would modify the season to account for the annual calendar shift and move the seasons one week later to eliminate conflicts with elk hunting during the first week of October. The proposal would change the season dates to open on October 8 and October 15, for 3 and 2 consecutive days respectively, and include the Columbus Day holiday, in order to accommodate for Base operations.

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 to a series of ranges as indicated in the table below.

<b>Deer: § 360(c) Additional Hunts - Tag Allocations</b>	
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<b>§</b>	<b>Hunt Number (and Title)</b>	<b>Current 2015</b>	<b>Proposed 2016 [Range]</b>
(1)	G-1 (Late Season Buck Hunt for Zone C-4)	2,710	500-5,000
(2)	G-3 (Goodale Buck Hunt)	35	5-50
(3)	G-6 (Kern River Deer Herd Buck Hunt)	50	25-100
(4)	G-7 (Beale Either-Sex Deer Hunt)	20 Military*	20 Military*
(5)	G-8 (Fort Hunter Liggett Antlerless Deer Hunt)	20 Tags Total* (10 Military & 10 Public)	20 Tags Total* (10 Military and 10 Public)
(6)	G-9 (Camp Roberts Antlerless Deer Hunt)	0	30 Tags Total* (15 Military 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*, DOD and as Authorized by the Installation Commander**	200 Military*, DOD and as Authorized by the Installation Commander**
(9)	G-12 (Gray Lodge Shotgun Either-Sex Deer Hunt)	30	10-50
(10)	G-13 (San Diego Antlerless Deer Hunt)	300	50-300
(11)	G-19 (Sutter-Yuba Wildlife Areas Either-Sex Deer Hunt)	25	10-50
(12)	G-21 (Ventana Wilderness Buck Hunt)	25	25-100
(13)	G-37 (Anderson Flat Buck Hunt)	25	25-50
(14)	G-38 (X-10 Late Season Buck Hunt)	300	50-300
(15)	G-39 (Round Valley Late Season Buck Hunt)	5	5-150
(16)	M-3 (Doyle Muzzleloading Rifle Buck Hunt)	20	10-75
(17)	M-4 (Horse Lake Muzzleloading Rifle Buck Hunt)	5	5-50
(18)	M-5 (East Lassen Muzzleloading Rifle Buck Hunt)	5	5-50

<b>Deer: § 360(c) Additional Hunts - Tag Allocations</b>			
<b>§</b>	<b>Hunt Number (and Title)</b>	<b>Current 2015</b>	<b>Proposed 2016 [Range]</b>
(19)	M-6 (San Diego Muzzleloading Rifle Either-Sex Deer Hunt)	80	25-100
(20)	M-7 (Ventura Muzzleloading Rifle Either-Sex Deer Hunt)	150	50-150
(21)	M-8 (Bass Hill Muzzleloading Rifle Buck Hunt)	20	5-50
(22)	M-9 (Devil's Garden Muzzleloading Rifle Buck Hunt)	15	5-100
(23)	M-11 (Northwestern California Muzzleloading Rifle Buck Hunt)	20	20-200
(24)	MA-1 (San Luis Obispo Muzzleloading Rifle/Archery Either-Sex Deer Hunt)	150	20-150
(25)	MA-3 (Santa Barbara Muzzleloading Rifle/Archery Buck Hunt)	150	20-150
(26)	J-1 Lake Sonoma Apprentice Either-Sex Deer Hunt)	25	10-25
(27)	J-3 (Tehama Wildlife Area Apprentice Buck Hunt)	15	15-30
(28)	J-4 Shasta-Trinity Apprentice Buck Hunt)	15	15-50
(29)	J-7 (Carson River Apprentice Either-Sex Deer Hunt)	15	10-50
(30)	J-8 (Daugherty Hill Wildlife Area Apprentice Either-Sex Deer Hunt)	15	10-20
(31)	J-9 (Little Dry Creek Apprentice Shotgun Either-Sex Deer Hunt)	5	5-10
(32)	J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt)	75 Tags Total* (15 Military & 60 Public)	85 Tags Total* (25 Military & 60 Public)
(33)	J-11 (San Bernardino Apprentice Either-Sex Deer Hunt)	40	10-50
(34)	J-12 (Round Valley Apprentice Buck Hunt)	10	10-20
(35)	J-13 (Los Angeles Apprentice Either-Sex Deer Hunt)	40	25-100
(36)	J-14 (Riverside Apprentice Either-Sex Deer Hunt)	30	15-75
(37)	J-15 (Anderson Flat Apprentice Buck Hunt)	10	5-30



<b>Deer: § 360(c) Additional Hunts - Tag Allocations</b>			
<b>§</b>	<b>Hunt Number (and Title)</b>	<b>Current 2015</b>	<b>Proposed 2016 [Range]</b>
(38)	J-16 (Bucks Mountain-Nevada City Apprentice Either-Sex Deer Hunt)	75	10-75
(39)	J-17 (Blue Canyon Apprentice Either-Sex Deer Hunt)	25	5-25
(40)	J-18 (Pacific-Grizzly Flat Apprentice Either-Sex Deer Hunt)	75	10-75
(41)	J-19 (Zone X-7a Apprentice Either-Sex Deer Hunt)	25	10-40
(42)	J-20 (Zone X-7b Apprentice Either-Sex Deer Hunt)	20	5-20
(43)	J-21 (East Tehama Apprentice Either-Sex Deer Hunt)	50	20-80

*\*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.*

**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.

<b>Archery Deer Hunting: § 361(b) - Tag Allocations</b>			
<b>§</b>	<b>Hunt Number (and Title)</b>	<b>Current 2015</b>	<b>Proposed 2016 [Range]</b>
(1)	A-1 (C Zones Archery Only Hunt)	1,945	[ 150-3,000 ]
(2)	A-3 (Zone X-1 Archery Hunt)	115	[ 50-1,000 ]
(3)	A-4 (Zone X-2 Archery Hunt)	10	[ 5-100 ]
(4)	A-5 (Zone X-3a Archery Hunt)	35	[ 10-300 ]
(5)	A-6 (Zone X-3b Archery Hunt)	70	[ 25-400 ]

<b>Archery Deer Hunting: § 361(b) - Tag Allocations</b>			
<b>§</b>	<b>Hunt Number (and Title)</b>	<b>Current 2015</b>	<b>Proposed 2016 [Range]</b>
(6)	A-7 (Zone X-4 Archery Hunt)	120	[ 25-400 ]
(7)	A-8 (Zone X-5a Archery Hunt)	15	[ 15-100 ]
(8)	A-9 (Zone X-5b Archery Hunt)	5	[ 5-100 ]
(9)	A-11 (Zone X-6a Archery Hunt)	50	[ 10-200 ]
(10)	A-12 (Zone X-6b Archery Hunt)	90	[ 10-200 ]
(11)	A-13 (Zone X-7a Archery Hunt)	45	[ 10-200 ]
(12)	A-14 (Zone X-7b Archery Hunt)	25	[ 5-100 ]
(13)	A-15 (Zone X-8 Archery Hunt)	40	[ 5-100 ]
(14)	A-16 (Zone X-9a Archery Hunt)	140	[ 50-500 ]
(15)	A-17 (Zone X-9b Archery Hunt)	300	[ 50-500 ]
(16)	A-18 (Zone X-9c Archery Hunt)	350	[ 50-500 ]
(17)	A-19 (Zone X-10 Archery Hunt)	100	[ 25-200 ]
(18)	A-20 (Zone X-12 Archery Hunt)	100	[ 50-500 ]
(19)	A-21 (Anderson Flat Archery Buck Hunt)	25	[ 25-100 ]
(20)	A-22 (San Diego Archery Either-Sex Deer Hunt)	1,000	[ 200-1,500 ]
(21)	A-24 (Monterey Archery Either-Sex Deer Hunt)	100	[ 25-200 ]
(22)	A-25 (Lake Sonoma Archery Either-Sex Deer Hunt)	35	[ 20-75 ]
(23)	A-26 (Bass Hill Archery Buck Hunt)	30	[ 10-100 ]
(24)	A-27 (Devil's Garden Archery Buck Hunt)	5	[ 5-75 ]

Archery Deer Hunting: § 361(b) - Tag Allocations			
§	Hunt Number (and Title)	Current 2015	Proposed 2016 [Range]
(25)	A-30 (Covelo Archery Buck Hunt)	40	[ 20-100 ]
(26)	A-31 (Los Angeles Archery Either-Sex Deer Hunt)	1,000	[ 200-1,500 ]
(27)	A-32 (Ventura/Los Angeles Archery Late Season Either-Sex Deer Hunt)	250	[ 50-300 ]
(28)	A-33 (Fort Hunter Liggett Late Season Archery Either-Sex Deer Hunt)	50 Tags Total* (25 Military & 25 Public)	50 Tags Total* (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.

### 362

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 2016 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 14, 2016, adoption hearing.

### 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 2015 season. This proposed regulatory action will amend subsection 363(m) providing the number of tags for hunting in 2016.

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 14, 2016, adoption hearing.

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

### 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 2016 tag quotas within each hunt 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:**

- The current Elk Hunt regulations in Title 14, Section 364, are overly long and the format makes it difficult to navigate to find pertinent hunting information. The Department of Fish and Wildlife (Department) is recommending placing a substantial amount of information from Section 364 in a Table to improve the hunting regulations and make them more user-friendly.
- 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.
- Remove, Amend, and Establish New Hunt Areas. The Department is recommending changes to the Hunt Areas as described in amended subsections 364(a)(1) through (d)(20).
- Add New Opportunities for Specialized Hunts. The Department makes many different specialized hunts available to the public including Archery, Muzzleloader, and Apprentice hunts. Because of the new areas added, some new opportunities will be made available.
- Modify Season Dates and Hunt Periods. 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 new Table sets forth the recommended days for each hunt.
- Modifications to Hunt Area Special Conditions.
- Current regulations require a hunter orientation in certain hunt areas prior to hunting. This requirement is not necessary in most areas since all pertinent information is sent to the successful tag purchaser (hunter) along with their tag. Tag holders are also provided contact numbers for local Department employees to answer any additional questions. Where required, the Special Conditions appear in regulation with the hunt area description. Special Conditions for hunting on military installations appear in new subsections (p) Fort Hunter Liggett Special Conditions; and, (q) Camp Roberts Special Conditions.

Minor Editorial Changes are proposed to improve clarity and reduce redundancy.

**364.1**

Current regulations in Section 364.1, SHARE Elk Hunts, T14, CCR, specify elk tag quotas for each hunt area. In order to achieve elk herd management goals and objectives and maintain hunting quality, it is periodically necessary to adjust quotas in response to dynamic environmental and biological conditions. In conjunction with proposed amendments to Section 364, Elk, which will delete, amend and add hunt areas, it is necessary to similarly amend Section 364.1 for consistency.

Preliminary tag quota ranges are indicated pending final 2016 tag allocations in accordance with elk management goals and objectives. Survey data collected between October 2015, and March 2016, will be the basis for the final tag numbers recommended to the Commission at the April 2016 adoption hearing. The quota ranges for 2016 elk tags are indicated in the proposed Regulatory Text.

Other minor editorial changes and renumbering have also been made.

The complete Table and text is found in the attached proposed Regulatory Text of Section 364.1.

### **708.18**

Existing regulations in Section 708, T14, CCR specify procedures and conditions for returning or exchanging big game tags and refunding tag fees but do not identify similar procedures to allow the return of big game fund raising tags sold by qualifying non-governmental organizations at auction.

This proposal would add Subsection 708.18 to establish regulations which allow the return of the purchase price for fund raising tags. The new provisions set forth a few possible circumstances beyond the control of the holder under which, by example, the tag holder may not be able to use the FRT. These include, but are not limited to, illness, military deployment, and hunt area closure (i.e., fire, etc.). However, the request to return the tag must be made in writing to the Department, at least ten business days before the start of the season. If possible, the returned FRT will be made available for purchase by the next highest bidder(s).

### **Benefits of the regulations**

#### **Sections**

265	The regulation eliminates unnecessary language regarding the prohibition on the use of treeing switches; and, permits GPS equipped collars increasing the hunter's ability to find and retrieve downed wild pigs and deer as well as lost dogs.
353	The Commission anticipates benefits to the health and welfare of California residents and benefits to the State's environment because the proposed regulation assists the Department in the sustainable management of California's big game populations.
360 - 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.
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.
363	The 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.
364 - 364.1	The proposed 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 where appropriate.
708.18	The Commission anticipates benefits to the health and welfare of California residents and benefits to the State's environment because the proposed regulations assist the Department in the sustainable management of California's natural resources.

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

<b>All Sections in this Notice</b>	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.
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**Consistency with State or Federal Regulations****Sections**

265, 353, 360, 361	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 allocations are consistent with Sections 360, 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. The proposed amendments are consistent with federal laws.
362	The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate Nelson Bighorn Sheep hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to Nelson Bighorn Sheep tag allocations are consistent with the provisions of Title 14. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.
363	The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate pronghorn antelope hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to pronghorn antelope tag allocations are consistent with the provisions of Title 14. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.
364 - 364.1	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.
708.18	The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate big game hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to the refund of the price of unused fund raising tags to be consistent with the provisions of Title 14. 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 Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 11, 2016 at 8:30 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 the Flamingo Conference Resort & Spa, 2777 Fourth Street, Santa Rosa, CA 95405, California, on Thursday, April 14, 2016, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed or e-mailed to the Commission office, must be received before 12:00 noon on April 12, 2016. All comments must be received no later than April 14, 2016, at the hearing location listed above. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, 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 Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Roger Bloom, Department of Fish and Wildlife, phone (916) 445-3777, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the various rulemaking documents are also available on the Fish and Game Commission 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 Analysis**

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.

#### **Sections**

- 265 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. Removing outdated prohibitions on treeing switches and GPS collars are not anticipated to affect current levels of hunting effort for species that can legally be pursued with dogs.
- 353 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 adds definitions to method of take regulations for big game in order to clarify regulations for law enforcement and legal applications, and eliminate possible confusion on the part of hunters. The proposal is economically neutral to business.
- 360(a), 360(b), 360(c), 361, 362, 363, 364, 364.1, 708.18 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:

**Sections**

265, 353, 360(a), 360(b), 360(c), 361, 362, 363, 364, 364.1      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.

The proposed action will not have significant impacts on jobs or business within California and does not provide benefits to worker safety.

708.18      (in addition to the statement above) The Commission does expect a small benefit to the State's environment because the proceeds of the sale of the fund raising tags are deposited to the Big Game Management Account established by the Legislature in Fish and Game Code Section 3953 for the sustainable management of the state's big game resources. The refund process, and subsequent re-sale of the tag, assures hunters that the money spent is worthwhile and without risk.

**(c) Cost Impacts on Private Persons.**

All Sections in this Notice      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**

All Sections in this Notice      None.

**(e) Other Nondiscretionary Costs/Savings to Local Agencies:**

All Sections in this Notice      None.

**(f) Programs Mandated on Local Agencies or School Districts**

All Sections in this Notice      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:**

All Sections in this Notice      None.

**(h) Effect on Housing Costs**

All Sections in this Notice      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, 2015

Sonke Mastrup  
Executive Director

**A Revised Roadmap for Recovery:  
Service Seeks Public Review of New Draft Giant Garter Snake Recovery Plan**

*Sacramento* - The U.S. Fish and Wildlife Service (Service) is seeking public input on a revised draft recovery plan for the giant garter snake. The recovery plan outlines a path to self-sustaining, healthy populations of the native California snake, listed as a threatened species under the Endangered Species Act (ESA). The plan covers nine areas in the Sacramento and San Joaquin Valleys. With only 5% of the snake's original habitat remaining, the plan describes opportunities to recover the giant garter snake throughout its range.

The ultimate goal of the ESA is to prevent the extinction of imperiled species and recover their populations so that they no longer require federal protections. Recovery plans are science-based advisory documents for the Service, states, and partners, designed to facilitate the successful recovery of species. As such, they contain suggested conservation strategies that are entirely voluntary. The Service developed this revised draft with public and partner engagement, evaluating public comment from the previous draft, new information about the needs of the species. The plan does not set any new regulations or provide for land or water restrictions. Rather, the strategy suggests protecting areas where the species is currently found, restoring additional areas to ensure connectivity, and improving water quality and reliability.

"This plan provides a detailed road map for the Service and its partners to successfully recover the giant garter snake," said Jennifer M. Norris, Field Supervisor for the U.S. Fish and Wildlife Services' Sacramento Field Office. "With the help of the public, diverse stakeholders and species experts, we are helping ensure this protected species thrives once again."

Wetland habitat loss is the most pressing condition that must be addressed in order to recover the species. California has lost 90% of the wetlands that used to provide clean water, flood protection and habitat in the Central Valley for the giant garter snake and several other species. Other threats to the snake include predation by non-native species, drought, climate change, poor water quality and roads.

For recovery purposes, the draft revised recovery plan highlights nine giant garter snake population areas and the actions needed for recovery in each of the watershed basins they occupy: Butte Basin, Colusa Basin, Sutter Basin, American Basin, Yolo Basin, Delta Basin, Cosumnes-Mokelumne Basin, San Joaquin Basin and Tulare Basin. It lays out broad goals of developing self-sustaining wild populations of the species, reducing or eliminating threats to it and restoring a healthy ecosystem. Strategies for achieving recovery are laid out for each basin. Finally, the recovery plan will improve scientific understanding of the giant garter snake's life cycle and needs through research and monitoring.

The giant garter snake has specific habitat needs that include summer aquatic habitat for foraging, bankside basking areas with nearby emergent vegetation for cover and thermal regulation, and places upland where it can hide for extended periods of inactivity. Perennial wetlands provide the highest quality habitat for the giant garter snake, and rice

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lands, with their interconnected structures of moving water, serve as an alternative habitat in the absence of higher quality wetlands. Giant garter snake recovery is consistent with current rice agricultural practices.

Other species that share habitat needs with the giant garter snake and will benefit from restoration and recovery efforts include; the Buena Vista Lake shrew, the western pond turtle, tricolored blackbird, yellow-headed blackbird, northern harrier, least bittern, fulvous whistling duck, redhead and the black tern. Management efforts that help recover the giant garter snake will be good for Pacific Flyway waterfowl as well.

The Service is seeking comments that provide new information pertinent to the plan, such as observed occurrences of the snake and new scientific information or evaluation of the plan's recovery elements. The 60-day comment period will close on February 22, 2016.

On Tuesday, February 2, 2016 at 11 a.m., there will be a public webinar to explain the plan and answer questions. For registration information, please email [josh\\_hull@fws.gov](mailto:josh_hull@fws.gov).

Please submit written comments by U.S. mail to the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825, Attention: Recovery Division.

Additional information, including the full plan, can be downloaded at [www.fws.gov/sacramento](http://www.fws.gov/sacramento).

The Giant Garter Snake Recovery Plan includes new science and analyses on how recovery of the snake can best move forward, and lays out target timelines for recovery and delisting species. Using the best available science, the plan balances the needs of people with the recovery of the species and its required habitat. Once the public and stakeholders have provided input on the draft, the Service will review all comments, develop a cost estimate, finalize the recovery plan and establish an implementation team.

*The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals, and commitment to public service.*

*For more information on our work and the people who make it happen, visit [www.fws.gov/cno](http://www.fws.gov/cno). Connect with our Facebook page at <http://www.facebook.com/usfwspacificsouthwest>, follow our tweets at <http://twitter.com/USFWSPacSWest>, watch our YouTube Channel at <http://www.youtube.com/usfws> and download photos from our Flickr page at [http://www.flickr.com/photos/usfws\\_pacificsw/](http://www.flickr.com/photos/usfws_pacificsw/)*

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## Fish and Game Commission



*Wildlife Heritage and Conservation*  
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BOARD OF SUPERVISORS

2015 DEC 15 A 10:52

December 11, 2015

### **NOTICE OF PROPOSAL FOR A 90 DAY EXTENSION OF EMERGENCY ACTION** Measures for Fisheries at Risk Due to Drought Conditions

Reference OAL File #2015-0626-01E

Pursuant to the requirements of Government Code subsections 11346.1(a)(2) and 11346.1(h), the Fish and Game Commission (Commission) is providing notice of proposed extension of existing emergency regulations, establishing measures for fisheries at risk due to drought conditions.

The objective of this re-adoption is to protect fisheries under critical conditions stemming from various conditions by establishing a set of triggers to guide fishing closures and reopening actions. Closures occur when specific triggering events occur, including water temperatures exceeding 70°F for over eight hours a day for three consecutive days. Other triggers include oxygen levels, water level, and breeding population. The Commission authorized staff to publish notice of intent to permanently implement Section 8.01, Title 14, CCR, at its December 10, 2015, meeting in San Diego, CA. Consideration for adoption of the regular rulemaking is scheduled for the April 14, 2016, Commission meeting in Santa Rosa.

### **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, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax 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 "Fisheries at Risk" addressed to:

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

California State  
Fish and Game Commission  
Attn: Jon Snellstrom  
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  
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to  
Add Section 8.01,  
Title 14, California Code of Regulations  
Re: Special Measures for Fisheries at Risk due to Drought Conditions

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

California continues to suffer under severe drought conditions with record low snow packs in 2014 and 2015. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California directing state officials to take all necessary actions to prepare for the record level of drought conditions and also signed an Executive Order redoubling state drought actions with additional measures to strengthen the state's response to drought. On April 1, 2015, the Governor ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new drought resilient technologies for California.

The hydrological conditions in 2015 are expected to deteriorate from the record low 2014 conditions. The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

Statewide water quality and quantity in many systems is likely to be inadequate to support fisheries as the summer progresses, resulting in impeded passage of spawning fish, increased vulnerability to mortality from predation and physiological stress, and increased angling harvest and/or hooking mortality. Furthermore, survival of eggs and juvenile fish in these systems over the coming months will be extremely low. The historically low water conditions will concentrate coldwater fish populations into shrinking pools of cold water habitat making them easy prey for illegal angling methods such as snagging, increased hooking mortality due to legal catch and release, over-harvest, as well as other human-related disturbances within their freshwater habitat. When coupled with drought-related environmental stressors, such as high water temperature, low dissolved oxygen, and severely reduced suitable habitat, these stressors can seriously affect reproductive success and survival rates.

Since 2014, the Department has worked with the Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. The Department and the Commission have determined that a temporary approach is needed to give the Department effective tools to respond more rapidly to the deteriorating water quality and quantity conditions in California's waters for 2015.

**Regulatory Proposal**

Environmental conditions resulting from the drought may require temporary restrictions on fishing to protect fish populations and sustain future opportunity. These conditional changes may affect each waterbody and fish population differently based on hydrological responses to the drought. Increased angling mortality, harvest, and angling pressure are the key components used to evaluate potential effects associated with degraded environmental conditions and will need to be evaluated on a water by water basis and over time as conditions change.

To ensure that fisheries are protected under critical conditions stemming from the drought, the Department is proposing a set of triggers to guide fishing closure and reopening decisions. The Department's decision to close or open a water will be based on the most current information available, collected by professional staff trained in the associated fields. Criteria for evaluating aquatic conditions are based on site-specific monitoring efforts with an emphasis on listed fish species, species of special concern, and gamefish.

The following proposed criteria will be used to determine if an emergency fishing closure or associated reopening is warranted:

Any water of the state not currently listed in Section 8.00 of these regulations may be closed to fishing by the Department when the Director, or his or her designee, determines one or more the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.
- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below 500 individuals.

All waters closed pursuant to this section will be reopened by the Department when the Director, or his or her designee, determines all of the following conditions have been met:

- Water temperatures in occupied habitat do not exceed 70° Fahrenheit for over eight hours a day for seven consecutive days.
- Dissolved oxygen levels in occupied habitat rise above 5 mg/L and are maintained at that level for seven consecutive days.
- Fish passage is available and that no impediment exists to strand or concentrate adults or juveniles during their migration.
- Water levels for ponds, lakes and reservoirs have recovered to greater than 10% of their capacity.
- Adult breeding populations are estimated to be recovered to greater than 500 individuals.

Justification and associated data for closure and reopening decisions will be provided to the Commission for any water that is subject to a fishing closure.

The Department and the Commission will work together to formulate a regular rulemaking proposal that will refine the approach and associated language based on experiences learned, feedback from the public, and revisions to increase the efficacy of this emergency action.

## **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 Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 240, and 315 of the Fish and Game Code and to implement, interpret, or make specific sections 200, 202, 205, 240, and 315 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, including, but not limited to, any nests or eggs thereof.

#### Informative Digest (Plain English Overview)

California continues to suffer under severe drought conditions with record low snow packs in 2014 and 2015. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California directing state officials to take all necessary actions to prepare for the record level of drought conditions and also signed an Executive Order redoubling state drought actions with additional measures to strengthen the state's response to drought. On April 1, 2015, the Governor ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new drought resilient technologies for California.

The hydrological conditions in 2015 are expected to deteriorate from the record low 2014 conditions. The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

Statewide water quality and quantity in many systems is likely to be inadequate to support fisheries as the summer progresses, resulting in impeded passage of spawning fish, increased vulnerability to mortality from predation and physiological stress, and increased angling harvest and/or hooking mortality. Furthermore, survival of eggs and juvenile fish in these systems over the coming months will be extremely low. The historically low water conditions will concentrate coldwater fish populations into shrinking pools of cold water habitat making them easy prey for illegal angling methods such as snagging, increased hooking mortality due to legal catch and release, over-harvest, as well as other human-related disturbances within their freshwater habitat. When coupled with drought-related



environmental stressors, such as high water temperature, poor water quality, and severely reduced suitable habitat, these stressors can seriously affect reproductive success and survival rates.

Since 2014, the Department has worked with the Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. The Department and the Commission have determined that a temporary approach is needed to give the Department effective tools to respond more rapidly to the deteriorating water quality and quantity conditions in California's rivers and streams for 2015.

The following proposed criteria will be used to determine if an emergency fishing closure or associated reopening is warranted:

Any water of the state not currently listed in Section 8.00 of these regulations may be closed to fishing by the Department when the Director, or his or her designee, determines one or more of the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.
- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below 500 individuals.

All waters closed pursuant to this section will be reopened by the Department when the Director, or his or her designee, determines all of the following conditions have been met:

- Water temperatures in occupied habitat do not exceed 70° Fahrenheit for over eight hours a day for seven consecutive days.
- Dissolved oxygen levels in occupied habitat rise above 5 mg/L and are maintained at that level for seven consecutive days.
- Fish passage is available and that no impediment exists to strand or concentrate adults or juveniles during their migration.
- Water levels for ponds, lakes and reservoirs have recovered to greater than 10% of their capacity.
- Adult breeding populations are estimated to be recovered to greater than 500 individuals.

Justification and associated data for closure and reopening decisions will be provided to the Commission for any water that is subject to a fishing closure.

The Department and the Commission will work together to formulate a regular rulemaking proposal that will refine the approach and regulatory language based on experiences learned, feedback from the public, and revisions to increase the efficacy of this emergency action.

Benefits: The proposed regulation will provide benefits to the environment through the conservation and preservation of listed species, species of special concern, and gamefish populations.

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, 240, and 315 Fish and Game Code).

**At the June 11, 2015 meeting, the Commission approved the proposed emergency regulations with the addition of the Department web site: <https://www.wildlife.ca.gov/Regulations> as another avenue to provide public notification of the Department actions under the temporary emergency regulations.**

**FISH AND GAME COMMISSION  
STATEMENT OF EMERGENCY ACTION  
FOR RE-ADOPTION OF EMERGENCY REGULATIONS**

Emergency Action to Re-adopt Section 8.01, Title 14, CCR,  
Re: Fisheries at Risk

**I. Request for Approval of Re-adoption of Emergency Regulations**

In response to the continued extreme drought conditions, the Department of Fish and Wildlife (Department) is requesting that the Fish and Game Commission (Commission) extend the Department's authority set forth in Section 8.01, Title 14 of the California Code of Regulations, to temporarily close fisheries that are experiencing rapidly degrading environmental conditions within waters of the state. The Department requests that the Commission readopt the emergency regulations that went into effect on July 2, 2015 for an additional period of 90 days while a Certificate of Compliance rulemaking is under consideration.

**II. Emergency Regulation in Effect to Date**

On January 17, 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency to exist in California due to severe drought conditions. As part of the declaration, the Governor ordered the Department to work with the Commission, using the best available science, to determine whether restricting fishing in certain areas would become necessary and prudent as drought conditions persist.

Over the next several months, environmental conditions resulting from the drought requires temporary restrictions on fishing on parts of four rivers to protect fish populations and sustain future opportunity. The Department and the Commission determined that another approach was needed to give the Department more efficient tools to provide quicker response to deteriorating water quality and quantity conditions in California's waters. As a result, on June 11, 2015, the Commission adopted emergency regulations which established a process to temporarily close fisheries experiencing degraded environmental conditions that may affect fish populations or their habitat within waters of the state. The criteria set forth in these regulations are intended to ensure that fisheries are protected under critical conditions stemming from the drought.

Since adoption of the emergency regulations the Department has implemented one emergency fishing closure on state waters, of the lower Merced River, on August 18, 2015. The Department used the criteria established in subsection (b) of Section 8.01 to determine that a closure was warranted.

Following protocol, the Department held a public meeting in Merced prior to the fishing closure. In addition, the Department provided the Commission the

biological data used to justify the closure and made the data available to the public on the Department's Emergency Fishing Closure webpage.

The Department and Commission are currently working together to formulate a regular rulemaking proposal that will refine the approach and associated language based on experience and feedback from the public, and with revisions to increase the efficacy of this emergency action.

### **III. Statement of Emergency**

The hydrological conditions in 2015 deteriorated from the record low 2014 conditions. The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and to develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

Statewide water quality and quantity in many systems is likely to be inadequate to support fisheries until significant and sustained rain and snow accumulate, resulting in impeded passage of spawning fish, increased vulnerability to mortality from predation and physiological stress, and increased angling harvest and/or hooking mortality. Furthermore, survival of eggs and juvenile fish in these systems over the coming months is expected to be extremely low. The historically low water conditions will continue to concentrate coldwater fish populations into shrinking pools of cold water habitat making them easy prey for illegal angling methods such as snagging, increased hooking mortality due to legal catch and release, over-harvest, as well as other human-related disturbances within their freshwater habitat. When coupled with drought-related environmental stressors, such as high water temperature, low dissolved oxygen, and severely reduced suitable habitat, these stressors can seriously affect reproductive success and survival rates.

Since 2014, the Department has worked with the Commission using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. The Department and Commission have determined that a temporary approach is needed to give the Department effective tools to respond more rapidly to deteriorating water quality and quantity conditions in California's waters for 2015 and early 2016.

### **V. Re-adoption Criteria**

#### **1) Same or Substantially Equivalent**

Pursuant to Government Code Section 11346.1(h), the text of a re-adopted regulation must be the "same or substantially equivalent" to the text of the original emergency regulation. The proposed language for the re-adopted

regulatory amendment is the same as the language of the original emergency regulation.

**(2) Substantial Progress**

Government Code Section 11346.1(h) specifies that the emergency rulemaking agency must demonstrate that it is making "substantial progress and has proceeded with due diligence" to comply with the standard rulemaking provisions. The Commission, at its December 10, 2015 meeting was requested by the Department to authorize staff to file this emergency readopt, as well as file notice of its intent to file a Certificate of Compliance.

Work on the emergency standard has been conducted by DFW biologists to determine longer term impacts which necessitated filing the notice of the Commissions intent to file a Certificate of Compliance in December. Due to the statutory requirement for the Commission to hear the proposed Certificate of Compliance rulemaking at its February 11, 2016 and April 14, 2016 meetings, it is necessary for the Commission to request this first Emergency Readopt for a period of 90-days, followed by a second 90 day request which is proposed to be voted on at the Commission's March 15, 2016 teleconference.

### Regulatory Language

Section 8.01, Title 14, CCR is added to read:

**Section 8.01. ~~Special Gear Provisions~~Measures for Fisheries at Risk due to Drought Conditions.**

(a) In response to continued extreme drought conditions, the commission has established a quick response process to temporarily close fisheries experiencing degraded environmental conditions that may affect fish populations or their habitat within waters of the state. The criteria set forth in subsections (b) and (c) are intended to ensure that fisheries are protected under critical conditions stemming from the drought. These criteria will be monitored in statewide inland fisheries, and they will be evaluated on a water by water basis over time as conditions change.

(b) The department may close to angling any waters of the state not currently listed in Section 8.00 of these regulations if the director, or his or her designee, finds one or more of the following conditions have been met:

(A) Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days

(B) Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.

(C) Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.

(D) Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.

(E) Adult breeding population levels are estimated to be below 500 individuals.

(c) Waters closed pursuant to subsection (b) shall be reopened by the department when the director, or his or her designee, finds all of the following conditions have been met:

(A) Water temperatures in occupied habitat do not exceed 70° Fahrenheit over eight hours a day for seven consecutive days

(B) Dissolved oxygen levels in occupied habitat rise above 5 mg/L and are maintained at that level over seven consecutive days.

(C) Fish passage is available and no impediment exists to strand or concentrate adults or juveniles during their migration.

(D) Water levels for ponds, lakes and reservoirs have recovered to greater than 10% of their capacity.

(E) Adult breeding population levels are estimated to be recovered to greater than 500 individuals.

(d) It shall be unlawful to take fish in any waters of the state closed to angling pursuant to this Section.

(e) Notification of department actions.

(1) The department shall maintain a list of closed waters of the state and update that list on Wednesday of each week by 1:00 pm. In the event that water conditions change later in the week, the fishing status for each specific water will not change until the day following the next Wednesday. It shall be the responsibility of the angler to use the telephone number provided below or go to the department's website at <https://www.wildlife.ca.gov/Regulations> to obtain the current status of any water. The number to call for information is (916) 445-7600.

Note: Authority cited: Sections 200, 202 and 240, 205, 240, and 315, Fish and Game Code. Reference: Sections 200, 202, 205 and 240, 240, and 315, Fish and Game Code.

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## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

December 24, 2015

This is to provide you with a copy of the notice of proposed regulatory action relative to adding Section 8.01, Title 14, California Code of Regulations, relating to special measures for fisheries at risk due to drought conditions, which are published in the California Regulatory Notice Register on December 25, 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 [www.fgc.ca.gov](http://www.fgc.ca.gov).

**Mr. Roger Bloom, Fisheries Branch, phone (916) 445-3777, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

  
Jon D. Snellstrom  
Associate Governmental Program Analyst

Attachment

2015 DEC 22 A 11:10  
BOARD OF SUPERVISORS

**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, 240 and 315 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 240, and 315 of said Code, proposes to add Section 8.01, Title 14, California Code of Regulations (CCR), relating to special measures for fisheries at risk due to drought conditions.

**Informative Digest/Policy Statement Overview**

California has recently experienced severe drought conditions with record low snow pack in 2015. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency to exist in California and ordered the Department to work with the Commission, using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. On April 1, 2015, the Governor ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new drought resilient technologies for California.

The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

Statewide water quality and quantity in many systems will likely be inadequate to support fisheries if existing environmental conditions persist, resulting in impeded passage of spawning fish, increased vulnerability to mortality from predation and physiological stress, and increased angling harvest and/or hooking mortality. Furthermore, survival of eggs and juvenile fish in these systems experiencing degraded habitats could be extremely low. The historically low water conditions may concentrate cold water fish populations into shrinking pools of cold water habitat making them easy prey for illegal angling methods such as snagging, increased hooking mortality due to legal catch and release, over-harvest, as well as other human-related disturbances within their freshwater habitat. When coupled with environmental stressors, such as high water temperature, low dissolved oxygen, and severely reduced suitable habitat, these stressors can seriously affect reproductive success and survival rates. Although habitat conditions can recover with the onset of good water quality, reduced population levels caused by drought conditions could still threaten the persistence and resilience of the fishery.

Since 2014, the Department has worked with the Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as habitat conditions degrade and or fish populations drop below a sustainable level. On June 11, 2015, the Commission adopted emergency regulations which establish a quick response process to temporarily close fisheries experiencing degraded environmental conditions that may affect fish populations or their habitat within waters of the state. These emergency regulations went into effect on July 2, 2015 and will expire on December 31, 2015.

To ensure that fisheries are protected now and in the future, the Department is proposing that the Commission make permanent the emergency regulations set forth in Section 8.01, Title 14, CCR, as amended herein.



## Regulatory Proposal

Environmental conditions resulting in degraded habitat quality and or extremely low population size may require temporary restrictions on fishing to protect fish populations and sustain future opportunity. These conditional changes may affect each waterbody and fish population differently based on various abiotic and biotic factors. Increased angling mortality, harvest, angling pressure, and fish population size are the key components used to evaluate potential effects associated with degraded environmental conditions and will need to be evaluated on a water by water basis and over time as conditions change.

To ensure that fisheries are protected under critical conditions, the Department is proposing a set of triggers to guide fishing closure and reopening decisions. The Department's decision to close or open individual waters will be based on the most current information available, collected by professional staff trained in the associated fields. Criteria for evaluating aquatic conditions are based on site-specific monitoring efforts with an emphasis on listed fish species, species of special concern, and gamefish.

The following proposed criteria will be used to determine if a fishing closure or associated reopening is warranted:

Any water of the state not currently listed in Section 8.00 of these regulations may be closed to fishing by the Department when the Director, or his or her designee, determines one or more the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.
- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over **two** consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below **50 individuals for a sub-population and 500 individuals for a standard population.**

All waters closed pursuant to this section will be reopened by the Department when the Director, or his or her designee, determines the initial closure-based criteria are no longer met and **water temperatures do not exceed 70° Fahrenheit for over eight hours a day for 14 consecutive days and dissolved oxygen remains above 5 mg/L for 14 consecutive days.**

### Proposed Regulatory Changes from Emergency Regulations:

The Department proposes additional modifications to the originally approved "emergency" text as shown in bold above due to further review of scientific literature as follows:

1. A consecutive 48 hour (two days) exposure rate for dissolved oxygen provides a better basis to address natural variability and risk for juvenile and early life stages of fish.
2. The Department is proposing to use the 50/500 rule in evaluating angling closures to address the effects on both the localized level for smaller sub-populations and larger meta-population complexes.
3. The Department is proposing an extended period of recovery for water temperature and dissolved oxygen closures to account for natural variability and fluctuations once the upper limits for water temperature and dissolved oxygen have been exceeded.

Justification and associated data for closure and reopening decisions will be provided to the Commission for any water that is subject to a fishing closure.

### **Benefits of the regulations**

As set forth in Fish and Game Code section 1700 it is "the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the state.

Adoption of scientifically-based criteria for angling closures due to adverse habitat conditions provides for the protection and maintenance of sport fish populations to ensure their continued existence. The benefits of the proposed regulations are in sustainable management of the State's sport fish resources, and the businesses that rely on sport fishing in California.

### **Consistency with State and Federal 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 recreational fishing in waters of the state (Fish & Game Code, §§ 200, 202, 205). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to angling closures to protect sport fish populations. Further, the Commission has determined that there are no existing comparable federal 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 Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 11, 2016 at 8:30 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 the Flamingo Conference Resort & Spa, 2777 Fourth Street, Santa Rosa, CA 95405, California, on Thursday, April 14, 2016, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed or e-mailed to the Commission office, must be received before 12:00 noon on April 12, 2016. All comments must be received no later than April 14, 2016, at the hearing location listed above. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, 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 Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Roger Bloom, Department of Fish and Wildlife, phone (916) 445-3777, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission 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 Analysis

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 is not anticipated to 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 expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide.

(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 expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide. Therefore the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Protecting fish populations during poor habitat conditions ensures the maintenance of the fishery and is needed to ensure future opportunity for California anglers. Recreational angling is a healthy outdoor activity that encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety because the proposed regulations do not affect working conditions.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

(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

Sonke Mastrup  
Executive Director

Dated: December 15, 2015