



# STANISLAUS COUNTY FISH AND WILDLIFE COMMITTEE



3800 CORNUCOPIA WAY, SUITE C, MODESTO, CALIFORNIA 95358

**THURSDAY, April 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:**

1. Approval of the request for funds from the U.S. Army Corp of Engineers in the amount not to exceed \$2,650 to purchase fish for the annual *Kids Fishing Fun Day* on Saturday, May 7th, 2016
2. Project Update from East Stanislaus Resource Conservation District.

### **Correspondence:**

1. Notice of proposed emergency action for the Tricolored Blackbird, *Fish and Game Commission, 2/19/2016*
2. Notice of proposed regulatory action relating to Waterfowl Regulations, *Fish and Game Commission, 2/26/2016*
3. Notice of proposal for a 90 Day Extension of Emergency Action, *Fish and Game Commission, 3/11/2016*
4. Notice in regards to salmon population, *South San Joaquin Irrigation District, 3/14/16*
5. Notice in regards to mammal regulations, *Fish and Game Commission, 3/30/2016*

### **Agenda Items:**

1. Public Comment(s)
2. Approval of January 28, 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
4. Issue a certificate of appreciation to Hugh Rutherford, Fish and Game Warden, for many years of service to fish and wildlife in Stanislaus County
5. Wildlife Management Report
6. Fishery Report
7. Wildlife Enforcement Report
8. Wood Duck Report
9. Approval to review, discuss and finalize changes on the Committee's Fund Procedures (Section 8)
10. Old Business
  - a. Frank Raines Guzzlers
11. Committee Comments

FW Members

Cristen Langner, DFG

Steve Tsao, DFG

Phil McKay, DFG

**Adjourn:** Next meeting – Thursday, July 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

**JANUARY 28, 2016 AT 4:00 P.M.**

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

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

### COUNTY FISH & WILDLIFE MEMBERS PRESENT:

Ed Ayers, D2  
Red Bartley, D1  
(\*present by telephone conference)  
Jim Atherstone, D3  
Bob Bashaw, D5\*  
Dave Doubledde  
(\*present by telephone conference)  
Ed Channing, ALT

### STATE FISH & WILDLIFE REPRESENTATIVE:

### PARKS & RECREATION STAFF PRESENT:

Cathy Winchester

### EXCUSED/ABSENT:

Ken Meidl, D4

### GUESTS PRESENT:

#### A. CALL TO ORDER & INTRODUCTIONS

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

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

#### REPORTER & ACTIONS

No requests for funds received or project updates.

#### C. CORRESPONDENCE

#### ACTIONS

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.

- Correspondence received after agenda packet was updated to website and sent to Committee and was discussed at this meeting:  
Notice of Findings regarding the tricolored blackbird, *Fish and Game Commission*, 1/4/16

#### D. PUBLIC COMMENTS

#### ACTIONS/REPORTER

No comment was received.

#### E. APPROVAL OF MINUTES

#### ACTIONS

Minutes for the October 22, 2015 meeting were approved upon motion and second as

*Atherstone*,

<p>written.</p> <p><b>F. WILDLIFE MANAGEMENT REPORT</b></p>	<p><i>Channing, unanimous approval</i></p> <p><b>ACTIONS/REPORTER</b></p>
<p>No report available.</p> <p><b>G. FISHERY REPORT</b></p>	<p><b>ACTIONS &amp; REPORTER</b></p>
<p>No report available.</p> <p><b>H. WILDLIFE ENFORCEMENT REPORT</b></p>	<p><b>REPORTER</b></p>
<p>No report available.</p> <p><b>I. WOOD DUCK REPORT</b></p>	<p><b>ACTIONS &amp; REPORTER</b></p> <p><i>Red Bartley/Ed Ayers</i></p>
<p>Boy scouts showing an interest in wood duck project. Ed Ayers has a lot of wood duck boxes and some poles if anyone is interested.</p> <p><b>J. OLD BUSINESS</b></p>	
<p>There is interest from Boys Scout leaders and individuals in doing some work on the Frank Raines Guzzlers.</p> <p><b>K. COMMITTEE COMMENTS</b></p>	<p><i>Ed Ayers</i></p> <p><b>ACTIONS &amp; REPORTER</b></p>
<p>1. Members reviewed the Committee's Fund Procedures and decided to keep and accept the current Fund Procedures in place.</p>	<p><i>Atherstone, Bashaw</i></p>
<p>2. Members reviewed and accepted the changes made to the Fund Application by adding 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.</p>	<p><i>Bashaw, Doubleddee</i></p>
<p>3. Contact will be made with Fish and Game Commission on continued attendance at the Fish and Wildlife Meetings.</p>	<p><i>Red Bartley</i></p>
<p>4. South San Joaquin Irrigation to start filling Woodward Reservoir on approximately 3/10/16.</p>	<p><i>Jim Atherstone</i></p>
<p>There will be an update by the next meeting in regards to reservoir fish planting dates.</p> <p><b>L. ADJOURNMENT &amp; NEXT MEETING</b></p>	<p><i>Red Bartley</i></p>
<p>There being no further business, the meeting was adjourned. The next regular meeting of the Fish and Wildlife Committee will be held on:</p> <p style="text-align: center;"><b>Thursday, April 28, 2016 at 4:00 p.m.</b>  <b>Conference Room, 2<sup>nd</sup> Floor</b>  <b>3800 Cornucopia Way, Modesto</b></p>	<p><i>Atherstone, Bartley, unanimous approval</i></p>

Prepared By: *Cathy Winchester, Fish and Wildlife Secretary*

209-525-6723

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

# Fund Request Application

Stanislaus County Fish and Wildlife



STANISLAUS COUNTY  
FISH AND WILDLIFE COMMITTEE

Applicant Name Kid's Fishing Fun Day  
Agency U.S. Army Corps of Engineers  
Mailing Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone \_\_\_\_\_ E-mail \_\_\_\_\_

Requesting Fund Amount \$ 2,650.00 Funds needed by 04-30-2016  
Project Performance Period Nov 2015-May-2016  
Event Name (if applicable) Kid's Fishing Fun Day (KFFD)  
Purpose Teach underprivileged kids how to fish, using proper catch & release techniques, while teaching the importance of natural resource conservation and outdoor recreation ethics and water safety

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

Detail Items to be Purchased (include cost per item, and/or attach quote(s). Additional sheets may be attached.)  
145 -150 1-lb black bass for catch and release, after the event the fish are released into the Horseshoe Road Recreation Area Pond for the public to enjoy, restocking the pond. \$350.00 for the purchase of re

Vendor to be purchased from Golden State Bait

Will you accept partial funding? ☒ YES ☐ NO

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

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

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

WINCHESTER.NORM.ALAN.126171  
Signature: 0257

Date: 29-Feb-2016

OFFICE USE ONLY:

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

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

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



Independent Order of Odd Fellows  
Stanislaus Lodge # 1.O.O.F  
Knights Ferry, CA 95361

24 August 2015

Army Corps of Engineers  
Stanislaus River Parks  
17968 Covered Bridge Rd  
Oakdale, CA 95361  
(209) 881-3517

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

Subject: Donation for Kids Fishing Fun Day.

Dear Committee Chairman,

The Army Corps of Engineers and The Independent Order of Odd fellows Stanislaus Lodge # 170 as co-sponsors would like to thank the Stanislaus County Fish & Wildlife Committee for allowing us to submit a proposal to the committee in regards to a donation for our **Kids Fishing Fun Day on Saturday May 7th 2016.**

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

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

I am inquiring if the Fines Committee would be willing to donate \$2,300.00 for the purchase of 270, 8"- 10" Large Mouth Bass to be purchased from Golden State Bait Inc in Merced formally known as Dutchman Creek and \$350 for replacement rod/reels. Stanislaus River Parks has no checking account for the deposit of donations. If our request is funded, **please direct the funds for payment to the vendor.**

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

Sincerely,

Park Ranger  
Norm Winchester  
Stanislaus River Parks

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

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



**STANISLAUS COUNTY FISH AND GAME COMMITTEE**

**APPLICATION FOR FISH AND GAME FINE MONIES**

**FUNDING FOR FISCAL YEAR**

**2015/2016**

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

Independent Order of Odd Fellows  
Stanislaus Lodge # 1.O.O.F  
Knights Ferry, CA 95361

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

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

**3. AMOUNT OF FUNDING REQUESTED. \$2,300.00.**  
\$ 2,000.00 for the purchase of fish planting 270 (8"- 10" Large Mouth Bass) +  
\$300 for transportation cost and \$350.00 for replacement rod/reels.

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

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

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

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

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

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



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

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

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

STANISLAUS LODGE #170, I.O.O.F.  
P.O. Box 834  
Knights Ferry, Ca. 95361



Stanislaus County  
Department of Parks & Recreation  
24 August 2015

**Fish & Wildlife Committee**

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

**PROPOSAL**  
**Golden State Bait Inc.**

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

**Actual Purchase & Amounts**

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

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



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

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



**COUNTY: STANISLAUS REGISTERED AQUACULTURALISTS**

**Facility Information**

CLAY PA FISH CO. Out of Business  
(209) 480-5147

0842

OAKDALE, CA 95361

10941 EATON RD

Bluegill channel catfish common carp

Largemouth bass

=====

DONALD SCHMIDT LIVE FOODS Only producing catfish

(209) 848-8625

0762

OAKDALE, CA 95361

7549 PATTERSON RD

C G N

Bullfrog channel catfish golden shiner minnow

Largemouth bass mosquito fish smallmouth bass

=====

GINOS FISH FARM/ BIG V CORPORATION Only producing catfish

(209) 668-7868

0823

CROWS LANDING, CA 95313

10815 S CARPENTER RD

=====

KENT KNOX & JOHN LANDERS FISH FARM Only producing catfish

(209) 848-1300

0944

OAKDALE, CA 95361

7591 PATTERSON RD

B C N

Bluegill bullfrog channel catfish

Common carp fathead minnow golden shiner minnow

Largemouth bass mosquito fish red swamp crayfish

=====

MAY ENTERPRISE INC Out of Business

(209) 491-0808

0780

WATERFORD, CA 95386

4831 TIMBELL RD

=====

Golden State Bait Inc. formally know as Dutchman Creek

6554 S. Healy Road

Merced, CA 95340

(209) 384-3474

(209) 385- 3474

=====

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

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



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

**Foothill Fisheries  
853-2167**

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

**\*Did not meet requirements**

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

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

**Only carrying Catfish**

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

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

**\*Did not meet requirements, ONLY CARRYING CATFISH**

**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacques Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
**Vacant, Member**  
**Vacant, Member**

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

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

## Fish and Game Commission



Wildlife Heritage and Conservation  
Since 1870

February 19, 2016

2016 FEB 23 A 10:55  
90 ASD OF SUPERVISOR

### NOTICE OF PROPOSED EMERGENCY ACTION

Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

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

### SUBMISSION OF COMMENTS

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

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

Please reference submitted comments as regarding "Tricolored Blackbird" addressed to:

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

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

E-mail Address: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

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

Fax No.: 916-323-6826

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."

**FISH AND GAME COMMISSION  
STATEMENT OF EMERGENCY ACTION**

Emergency Action to Add Section 749.8, Title 14, CCR,  
Re: Special Order Relating to Incidental Take of Tricolored Blackbird (*Agelaius tricolor*)  
During Candidacy Period

**I. Introduction**

The Fish and Game Commission (Commission) is the decision-making body that implements the California Endangered Species Act (CESA) (Section 2050 et seq. of the Fish and Game Code (FGC)). As described in greater detail below, CESA authorizes the Commission to establish lists of threatened and endangered species, and to add or remove species from those lists if it finds, upon receipt of sufficient scientific information, that the action is warranted. Pursuant to Section 2084, FGC, the Commission may authorize, subject to the terms and conditions it prescribes, the taking of any candidate species while the Department of Fish and Wildlife (Department) and Commission evaluate whether the species should be listed as threatened or endangered under CESA.

On December 10, 2015, the Commission considered the adoption of findings designating tricolored blackbird as a candidate species under CESA. The Commission has prepared this Statement of Emergency Action under the Administrative Procedure Act (APA) (Gov. Code Section 11340 et seq.) in connection with its subsequent adoption of Section 749.8 of Title 14 of the California Code of Regulations (CCR). The Commission's adoption of Section 749.8 as an emergency action under APA is based, in part, on authority provided by FGC sections 240 and 2084. Pursuant to FGC Section 2084, CCR Section 749.8 will authorize incidental "take" of tricolored blackbird during candidacy, subject to certain terms and conditions prescribed by the Commission. (See generally FGC, sections 2080, 2084, 2085 and 86.)

As set forth below, the Commission designated tricolored blackbird as a candidate species under CESA and finds that adopting Section 749.8 pursuant to FGC sections 240 and 2084 constitutes a necessary emergency action by the Commission under APA. In the absence of this emergency regulation, individuals engaging in activities authorized pursuant to Section 749.8 would need to obtain an incidental take permit (ITP) or other authorization from the Department on a project-by-project basis to avoid potential criminal liability for violating CESA. Issuing individual ITPs authorizing incidental take is a complicated and lengthy process, and the Commission finds specifically that it is not feasible for the regulated community to obtain, and the Department to issue, ITPs or other authorizations on a project-by-project basis for the numerous activities that would otherwise be prohibited during the candidacy period for tricolored blackbird.

Historically, tricolored blackbirds nested in native flora in or adjacent to wetlands in the Central Valley and elsewhere across the State of California. Concomitant with the loss

of wetlands during the 19th and 20th centuries, tricolored blackbirds have adapted to nest in varied substrates. For example, grain fields planted for winter silage on dairy farms provide attractive nesting sites for the species; unfortunately, nesting occurs at about the same time the crops are scheduled for harvest.

For the past decade, a patchwork of funding sources has been used to pay farmers for a lost crop when they agree to delay harvest until after tricolored blackbird nesting is complete. In some cases, particularly where funding was unavailable or farmers were not aware of the potential for funding to offset losses, harvest has occurred before the young fledged. Recently, the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) committed to provide multiple years of funding to support a program to delay harvest of fields in which tricolored blackbird colonies have nested. At the same time, Dairy Cares, an organization composed of dairy businesses across California, in coordination with other farming interests has initiated an active campaign to educate dairy farmers about tricolored blackbird and the NRCS-funded program. In 2015, through a coordinated effort including NRCS, farming interests, the Department, and Audubon California, dairy farmers enrolled in the NRCS program delayed harvest on fields where an estimated 67,000 tricolored blackbirds nested.

NRCS funds compensate a farmer for about 85 percent of the value of a crop lost by a harvest delay. Under the NRCS program, a colony is identified and the area inhabited by the colony is delineated by a biologist. Once the colony is delineated, a buffer is established and the farmer is allowed to harvest only those fields outside the colony site and buffer area. Delaying harvest protects the vast majority of the colony until the birds fledge, but it does not guarantee that no take will occur. The tricolored blackbird was designated as a candidate for listing, and is therefore subject to the regulatory protections provided by CESA. Promulgating a regulation to authorize incidental take provides farmers assurances that if they agree to follow the requirements imposed by NRCS, delay harvest, and protect the colony nesting in their field, they will not be penalized in the event a small number of birds are taken incidental to their beneficial conservation actions in delaying harvest and otherwise lawful agricultural activities.

The harvest management programs administered by NRCS and the Department can be expected to protect tens of thousands of nesting tricolored blackbirds provided farmers are incentivized to participate. However, the designation of the tricolored blackbird as a candidate for listing under CESA could inhibit participation in the harvest management programs. This regulation, in combination with funding from NRCS, will provide farmers with a strong incentive to participate in the harvest management program.

Tricolored blackbird nesting can begin as early as February. The timing of this nesting relative to the candidacy determination provides inadequate time for the Commission to comply with the normal APA process for adopting a regulation to authorize take. It is only possible to put a regulation in place to conserve nesting tricolored blackbirds and protect farmers that enroll in one of the harvest management programs in 2016 through emergency action. Such action will effectuate the purposes of Fish and Game Code Section 2084 and CESA more broadly.

Absent this regulation, enrollment in the NRCS program may decline. Furthermore, farmers may elect to plant lower value crops that do not provide nesting habitat for tricolored blackbird, thereby decreasing available nesting habitat; farmers may harvest their crop early before onset of the nesting season, which would decrease the value of the crop and also decrease available nesting habitat; or farmers may risk harvesting their crop even if tricolored blackbird are present.

Without this emergency regulation, prospective permittees, many of whom already have the necessary entitlements to proceed with their approved projects, would be subject to CESA's take prohibition without, by any reasonable measure, an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of tricolored blackbird would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby tricolored blackbird may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that provide great economic and other benefits to the permittees, their employees, their local communities, and the State of California would be postponed during the candidacy period or canceled entirely. The Commission finds this threatened result constitutes an emergency under APA requiring immediate action.

## **II. Background**

On October 8, 2014, the Commission received a petition from the Center for Biological Diversity to take emergency action to list the tricolored blackbird (*Agelaius tricolor*) as endangered under CESA. On December 3, 2014, the Commission listed tricolored blackbird as endangered through emergency regulations that expired on June 30, 2015. In the interim, the Department prepared and submitted to the Commission a petition evaluation as required by CESA. The petition evaluation was received by the Commission at its April 9, 2015, meeting and on June 11, 2015, the Commission made a decision that listing tricolored blackbird as endangered was not warranted.

On August 19, 2015, the Center for Biological Diversity submitted a petition that was largely the same as the petition submitted to the Commission on October 8, 2014, to take emergency action to list the tricolored blackbird as an endangered species. The petition included an addendum composed of two new relevant studies on the tricolored blackbird. On December 10, 2015, the Commission adopted findings designating the tricolored blackbird as a candidate species under CESA.

## **III. Facts Constituting the Need for Emergency Action**

APA defines an "emergency" to mean "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." (Gov. Code Section 11342.545.). To make a finding of emergency, the agency must describe the specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. (Gov. Code Section 11346.1(b)(2).). Some factors an agency may consider in determining

whether an emergency exists include: (1) the magnitude of the potential harm, (2) the existence of a crisis situation, (3) the immediacy of the need, i.e., whether there is a substantial likelihood that serious harm will be experienced unless immediate action is taken, and (4) whether the anticipation of harm has a basis firmer than simple speculation. The Commission has considered all of these factors and the definition of an emergency provided in APA, as well as pertinent authority in FGC Section 240. Under this latter authority, notwithstanding any other provision of FGC, the Commission may adopt an emergency regulation where doing so is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, or for the immediate preservation of the public general welfare.

The Commission finds that such necessity exists in the present case. Specifically, the Commission finds that:

- A failure to adequately protect the tricolored blackbird would cause serious harm to the general welfare of the citizens of the State of California.
- Action is necessary to ensure the protection and immediate conservation of the tricolored blackbird during the upcoming harvest of grain fields planted for silage.
- This finding is based on the record before the Commission, generally and specifically the past activity under the Natural Resources Conservation Service program and the timing of the candidacy of the tricolored blackbird in relation to the upcoming harvest.

Section 749.8 authorizes incidental take of the tricolored blackbird during candidacy for three categories of activities:

- Actions to protect, restore, conserve or enhance habitat.
- Actions to monitor tricolored blackbird breeding colonies.
- Harvest of grain crops under a harvest management program to protect colonies.

The regulation authorizes take, as defined by FGC Section 86, of tricolored blackbird in the limited circumstances described below subject to certain terms and conditions, during the species' candidacy under CESAFGC.

(a) Take Authorization.

1. Actions to Protect, Restore, Conserve, or Enhance Habitat.

Subsection 749.8(a)(1), authorizes take of the tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

Without Section 749.8, subsection (a)(1), take of the tricolored blackbird incidental to otherwise lawful activities to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law would require authorization by the Department through an individual ITP which is a lengthy, complicated process. Ongoing and planned activities to protect, restore, conserve, or enhance habitat are critical during this candidacy period. The status of many listed species is precarious, and even the slightest delay in initiated or continued implementation of any related conservation actions could adversely affect or otherwise cause further decline of these species. In addition, any further decline in the status of listed species will lead to increased costs to the Department because more resources will be required to get the species to the point where protective measures are no longer necessary. Increased cost will also be shouldered by prospective permittees, who will be charged with funding the mitigation and related monitoring required for the impacts of their project on the species.

Adoption of this emergency regulation would minimize the hardships that would be caused by delays in ongoing or new lawful activities to protect, restore, conserve, and enhance the habitat of state or federally threatened or endangered species (including the tricolored blackbird). The Commission finds that impacts to activities to protect, restore, conserve, or enhance habitat of state or federally threatened or endangered species caused by designating the tricolored blackbird as a candidate species, constitute an emergency under the APA requiring immediate action.

## **(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.**

Section 749.8, subsection (a)(2), authorizes take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

Without Section 749.8, subsection (a)(2), there would not be the necessary monitoring to ensure the protection and immediate conservation of tricolored blackbird during the upcoming harvest of grain fields planted for silage. Department guidance suggests that walking survey transects through a portion of the colony could be used to estimate the nesting stage of breeding colonies and inform decisions that must be made to comply with subsection (a)(3).

## **(3) Harvest of Grain Crops under a Harvest Management Program to Protect Colonies.**

Section 749.8, subsection(a)(3), authorizes take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the Department; the harvest management program shall include the establishment of a buffer zone and harvest date as described in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding



Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department, or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolor blackbirds

Without Section 749.8, subsection (a)(3), enrollment in the NRCS program may decline, which is necessary to ensure the protection and immediate conservation of the tricolored blackbird during the upcoming harvest of grain fields planted for silage.

(b) Reporting.

Section 749.8, subsection (a)(2), requires that any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) and (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period.

As discussed in III above, it is vital that during this candidacy period detections and observations of the tricolored blackbird be reported to the Department so it can have the most complete information possible as it prepares its recommendation to the Commission on whether to recommend listing the species, and for the Commission that must make the ultimate decision to list or not.

For these reasons, the immediate adoption of this emergency regulation is necessary to allow numerous projects and activities to continue during the candidacy review period for tricolored blackbird under CESA. This regulation includes conditions designed to protect the species for all of the activities covered. The Commission believes the activities permitted under this regulation will result in very limited take and will not likely jeopardize the continued existence of the species. The Commission finds, in this respect, that the regulation subject to this determination will ensure appropriate interim protections for the tricolored blackbird while the Department conducts a 12-month review of the status of the candidate species and the Commission makes its final determination regarding listing under CESA.

#### **IV. Express Finding of Emergency**

Pursuant to the authority vested in the Commission by FGC Section 240, and for the reasons set forth above, the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, or for the immediate preservation of the public general welfare. The Commission specifically finds that the adoption of this regulation will allow

activities that may affect the tricolored blackbird to continue during the candidacy period as long as those activities are conducted in a manner consistent with the protections specified in this regulation.

## **V. Authority and Reference Citations**

Authority: FGC Sections 200, 202, 240, and 2084.

Reference: FGC Sections 200, 202, 240, 2080, 2084, and 2085.

## **VIII. Informative Digest**

The sections below describe laws relating to listing species under CESA, the effect of this emergency regulation, a description of related federal law, and a policy statement overview.

### **A. Laws Related to the Emergency Regulation - Listing under CESA**

#### **1. Petition and Acceptance**

FGC Section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. Any interested person may petition the Commission to add a species to the endangered or threatened list by following the requirements in FGC Sections 2072 and 2072.3. If a petition is not factually incomplete and is on the appropriate form, it is forwarded to the Department for evaluation.

FGC Section 2073.5 sets out the process for accepting for further consideration or rejecting a petition to list a species and, if the petition is accepted, a process for actually determining whether listing of the species as threatened or endangered is ultimately warranted. The first step toward petition acceptance involves a 90-day review of the petition by the Department to determine whether the petition contains sufficient information to indicate that the petitioned action may be warranted. The Department prepares a report to the Commission that recommends rejection or acceptance of the petition based on its evaluation.

FGC Section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under CESA. CESA prohibits unauthorized take of a candidate species. FGC Section 86 states "take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Killing of a candidate, threatened, or endangered species under CESA that is incidental to an otherwise lawful activity and not the primary purpose of the activity constitutes take under state law. (*Department of Fish and Game v. Anderson-Cottonwood Irrigation District* (1992) 8 Cal.App.4th 1554; see also *Environmental Protection and Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (in the context of an ITP issued by the

Department under CESA the California Supreme Court stated, "'take' in this context means to catch, capture or kill").)

CESA's take prohibition applies to candidate species pursuant to FGC Section 2085 upon public notice by the Commission of its finding that sufficient information exists to indicate the petitioned action may be warranted. Upon publication of such notice in the California Regulatory Notice Register, take of candidate species is prohibited absent authorization as provided in FGC. Following such notice, all activities, whether new or ongoing, that cause incidental take of the candidate species are in violation of CESA unless the take is authorized in regulations adopted by the Commission pursuant to FGC Section 2084 or the Department authorizes the take through the issuance of an ITP or other means available under CESA.

## 2. Status Review and Final Action on the Petition

The Commission's acceptance of a petition initiates a 12-month review of the species' status by the Department, pursuant to FGC Section 2074.6. This status review helps to determine whether the species should be listed as threatened or endangered. Unlike the Department's initial evaluation, which focuses largely on the sufficiency of information submitted in the petition, the 12-month status review involves a broader inquiry into and evaluation of available information from other sources. The Commission is required to solicit data and comments on the proposed listing soon after the petition is accepted, and the Department's written status report must be based upon the best scientific information available.

Within 12 months of the petition's acceptance, the Department must provide the Commission a written report that indicates whether the petitioned action is warranted. (FGC Section 2074.6.) The Commission must schedule the petition for final consideration at its next available meeting after receiving the Department's report. (*Id.*, Section 2075.) In its final action on the petition, the Commission is required to decide whether listing the species as threatened or endangered "is warranted" or "is not warranted." If listing is not warranted in the Commission's judgment, take of the former candidate species is no longer prohibited under CESA. (*Id.*, Section 2075.5.)

### B. Effect of the Emergency Action

Section 749.8 of Title 14 of the California Code of Regulations would authorize take, as defined by FGC Section 86, of the tricolored blackbird during its candidacy subject to the following terms and conditions:

#### (a) Take Authorization.

The Commission authorizes the take of tricolored blackbird during the candidacy period subject to the terms and conditions herein.

**(1) Actions to Protect, Restore, Conserve or Enhance Habitat.**

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

**(2) Actions to Monitor Tricolored blackbird Breeding Colonies.**

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

**(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.**

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by NRCS, or harvest management program administered or approved by the Department; the harvest management program shall include the establishment of a buffer zone and harvest date as described in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department, or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolor blackbirds.

**(b) Reporting.**

Any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) and (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period. Information reported to the Department pursuant to this subsection shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the animal(s) observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged. Any person, individual, organization, or public agency, or their agents seeking incidental take

authorization pursuant to subsection (a)(3), shall report their participation in an approved harvest management program to the Department prior to grain harvest.

(c) Additions, Modifications or Revocation.

(1) Incidental take of tricolored blackbird from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to FGC Section 2084, or by the Department on a case-by-case basis pursuant to FGC Section 2081, or other authority provided by law.

(2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of tricolored blackbird.

**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 regulations for the incidental take of a candidate species (FGC Section 2084). Commission staff has searched CCR and has found that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

**VI. Specific Agency Statutory Requirements**

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to FGC Section 240. The Commission held a public hearing on this regulation on February 11, 2016, and the above finding that this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, and for the immediate preservation of the public general welfare meets the requirements of Section 240.

**VII. Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Costs/Savings in Federal Funding to the State:

The Commission has determined that the adoption of Section 749.8 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will not result in costs or savings in federal funding to the State.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that adoption of Section 749.8 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will likely provide cost savings to local agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of the tricolored blackbird on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take authorization. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

(c) Programs Mandated on Local Agencies or School Districts:

The Commission has determined that the adoption of Section 749.8 of Title 14 of the California Code of Regulations as an emergency regulation does not impose a mandate on local agencies or school districts.

(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:

The Commission has determined that the adoption of Section 749.8 of Title 14 of the California Code of Regulations as an emergency regulation will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement and will not affect housing costs.

(f) Costs or Savings to State Agencies

The Commission has determined that adoption of Section 749.8 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will likely provide cost savings to state agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of the tricolored blackbird on a project-by-project basis, which is both time-consuming and costly for both the Department in processing and authorizing such take, as well as to state agencies seeking take authorization.

Absent adoption of the emergency regulation, state and local agencies, and the regulated community will bear the timing and process costs associated with project-by-project permitting by the Department. Regulations implementing CESA contemplate a roughly six month review by the Department for proposed ITPs. Appropriate CEQA review for individual ITPs also affects the timing of permits issued by the Department. (CCR, Title 14, sections 783.3 and 783.5.) The number and timing of permits issued by the Department is also a product of economic conditions, and the resources actually available to the Department to administer the permitting program.

Regulatory Text

Section 749.8, Title 14, CCR, is added to read:

749.8 Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

This regulation authorizes take as defined by Fish and Game Code Section 86, of tricolored blackbird in the limited circumstances described below, subject to certain terms and conditions, during the species' candidacy under the California Endangered Species Act (Fish and Game Code, Section 2050 et seq.).

(a) Take Authorization.

The Commission authorizes the take of tricolored blackbird during the candidacy period subject to the terms and conditions herein.

1. Actions to Protect, Restore, Conserve, or Enhance Habitat.

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the Department; the harvest management program shall include the establishment of a buffer zone and harvest date as described in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department,

or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolor blackbirds.

(b) Reporting.

Any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) and (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period. Information reported to the Department pursuant to this subsection shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the animal(s) observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged. Any person, individual, organization, or public agency, or their agents seeking incidental take authorization pursuant to subsection (a)(3), shall report their participation in an approved harvest management program to the Department prior to grain harvest.

(c) Additions, Modifications or Revocation.

(1) Incidental take of tricolored blackbird from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

(2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of tricolored blackbird.

Note: Authority cited: Sections 200, 202, 240 and 2084, Fish and Game Code.

Reference: Sections 200, 202, 240, 2080, 2084 and 2085, Fish and Game Code.



**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
Vacant, Member  
Vacant, Member

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Mike Yaun, Acting Executive Director**  
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## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

February 26, 2016

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending sections 502 and 507, Title 14, California Code of Regulations, relating to Waterfowl Regulations for the 2016-2017 season, which are published in the California Regulatory Notice Register on February 26, 2016.

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

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

**Ms. Melanie Weaver, Wildlife Branch, phone (916) 445-3717, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

  
Jon D. Snellstrom  
Associate Governmental Program Analyst

Attachment

2016 MAR - 1 A 10:29

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 202 and 355 of the Fish and Game Code and to implement, interpret or make specific Sections 202, 355 and 356 of said Code, proposes to amend section 502 and 507, Title 14, California Code of Regulations (CCR), relating to Waterfowl hunting.

**Informative Digest/Policy Statement Overview**

**Section 502**

Current regulations in Section 502, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season opening and closing dates, and establish daily bag and possession limits for waterfowl hunting.

The frameworks for the 2016-17 season have been approved by the Flyway Councils and adopted at the Service Regulation's Committee meeting October 20-21, 2015. The proposed frameworks allow for a liberal duck season which includes a 107 day season, 7 daily duck limit including 7 mallards but only 2 hen mallards, 2 pintail, 2 canvasback, 2 redheads, and 3 scaup (during an 86 day season). Duck daily bag limits ranges, duck season lengths ranges and goose season length ranges have been provided to allow the FGC flexibility. Lastly, Federal regulations require that California's hunting regulations conform to those of Arizona in the Colorado River Zone and with Oregon in the North Coast Special Management Area. Based on the frameworks, the Department of Fish and Wildlife (Department) provides an annual recommendation to the Fish and Game Commission.

The Department recommendations are as follows:

1. Changes in current subsection 502(d)1 propose to allow hunting on the Department's Type C wildlife areas and public waters during the late season hunt in the Northeastern Zone.
2. Changes in current subsection 502(d) propose to increase the total daily bag limit for geese in the Northeastern, Southern San Joaquin Valley, and the Balance of State zones from 25 to 30 geese per day; the Southern California Zone total daily bag limit for geese will increase from 18 to 23 geese per day. The bag limit for white geese will increase from 15 to 20 per day in the zones referenced.
3. Proposed changes in current subsection 502(d)(5)(D)8 increase the white goose daily bag limit in the Imperial County Special Management Area from 15 to 20 per day.

4. Proposed changes in current subsection 502(e) modify the age limit to participate in the Youth Waterfowl Hunting Days from 15 years of age and under to 17 years of age and under.

Minor editorial changes are also proposed to clarify and simplify the regulations and to comply with existing federal frameworks.

### **Section 507**

Current regulations in Section 507(a)(2), Title 14, California Code of Regulations (CCR), prohibit archery hunters from carrying a firearm while hunting migratory birds. However, since there is no specific archery only hunt set aside for migratory birds, there is no reason to think individuals would take a bird with a firearm but pretend it was taken with archery equipment. Consequently, there is no reason to restrict archers from carrying firearms when taking migratory birds. The existing regulation also refers to "crossbows bolts," rather than the proposed "crossbow bolts." This amendment is intended to correct a grammatical error and is necessary to improve the clarity of the regulation.

The Department proposes to delete that part of subsection 507(a)(2) prohibiting the possession of a firearm while archery hunting.

#### **Benefits of the regulations**

The benefit of the proposed regulation is consistency in regulations. Adoption of scientifically-based criteria for migratory waterfowl provides for the protection and maintenance of waterfowl populations to ensure their continued existence. The benefits of the proposed regulations are in sustainable management of the State's waterfowl resources, the businesses that rely on sport fishing in California and Federal guidelines.

#### **Consistency with State and Federal Regulations**

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to Section 502 are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate waterfowl hunting regulations. Pursuant to Section 355, Fish and Game Code, the commission may, annually adopt regulations pertaining to migratory birds to conform with or to further restrict the rules and regulations prescribed pursuant to the federal Migratory Bird Treaty Act.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at 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 8:00 a.m. on April 14, 2016.

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, Mike Yaun, Acting 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 Mike Yaun or Jon Snellstrom at the preceding address or phone number. **Melanie Weaver, Senior Environmental Scientist, Waterfowl Program, Department of Fish and Wildlife, phone (916) 445-3717, 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 will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations are intended to provide additional recreational opportunity to the public. The response is expected to be minor in nature.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed waterfowl regulations will set the 2016-17 waterfowl hunting season dates and bag limits within the federal frameworks. Positive impacts to jobs and/or businesses that provide services to waterfowl hunters will be realized with the proposed regulations for the waterfowl hunting season in 2016-17. This is based on a 2011 US Fish and Wildlife national survey of fishing, hunting, and wildlife associated recreation for California. The report estimated that migratory bird hunters contributed about \$169,115,000 to businesses in California during the 2011 migratory bird hunting season. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed regulations is to sustainably manage waterfowl populations, and consequently, the long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources. The Commission anticipates benefits to the State's environment by the sustainable management of California's waterfowl resources.

The Commission does not anticipate any impacts to worker safety because the proposed amendments will not affect working conditions.

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

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

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

**Effect on Small Business**

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

**Consideration of Alternatives**

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

**FISH AND GAME COMMISSION**

Mike Yaun  
Acting Executive Director

Dated: February 16, 2016

**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacques Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
**Vacant, Member**  
**Vacant, Member**

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

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

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

### 15 Day Notice of California Notice Register 2016, No.2-Z, Z-2015-1228-03 Re: Mammal Regulations for the 2016-2017 Seasons

February 24, 2016

This is to provide you with a 15 day continuation notice of proposed regulatory action relative to amending sections 364, Elk and 364.1 SHARE Elk Hunts, Title 14, California Code of Regulations, relating to the proposed regulations for "Mammal Regulations for the 2016-2017 Seasons" which was published in the California Regulatory Notice Register on January 8, 2016, Register 2016, No. 2-Z; OAL Notice File No. Z-2015-1228-03. The proposed changes to the originally noticed language are shown in double underline/strikeout underline and are sufficiently related to the originally proposed text.

The changes in regulations reflect an action by the Fish and Game Commission to allow the Department of Fish and Wildlife to pull its 2016 Draft Elk Environmental Document from consideration, and rely on the existing Elk Final Environmental Document from 2010. And to amend the proposed text of the regulations to align with the existing projects approved in 2010.

The date of the public hearing related to this matter, and associated deadlines for receipt of oral or written comments at the meeting to be held on April 14, 2016 in Santa Rosa has not changed from the original notice.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx#265>.

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

Sincerely,

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

Attachment

ATTACHMENTS AVAILABLE  
FROM CLICK

2016 MAR -1 A 8:29  
BOARD OF SUPERVISORS

**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
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Huntington Beach  
Vacant, Member  
Vacant, Member

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Mike Yaun, Acting Executive Director**  
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Sacramento, CA 95814  
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www.fgc.ca.gov

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

March 11, 2016

### **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, and  
OAL File #2015-0626-01EE

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.

**There were no changes made to the previously noticed 90 day extension of emergency action.**

### **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."



Jon D. Snellstrom  
Associate Governmental Program Analyst

**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.

#### **Updated 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).

**Pursuant to Section 11346.1(h), Government Code, OAL may approve not more than two readoptions, each for a period not to exceed 90 days, of an emergency regulation that is the same as or substantially equivalent to an emergency regulation previously adopted by that agency. At its June 11, 2015 meeting in Mammoth Lakes, the Fish and Game Commission adopted the emergency action; and at its December 10, 2015 in San Diego, the Commission adopted the request for the first 90 day extension. At the December 10, 2015 meeting the Commission also voted to go to Notice with a regular rulemaking which has been noticed and will be considered for adoption at its April 14, 2016 meeting in Santa Rosa, CA. (OAL Notice #2015-1215-08.)**

**The Fish and Game Commission will meet again on March 15, 2016 during a teleconference that takes place at: Fish and Game Commission Conference Room 1320, 1416 Ninth Street, Sacramento, CA; Department of Fish and Wildlife, 50 Ericson Court, Arcata, CA 95521; Department of Fish and Wildlife, 7329 Silverado Trail, Napa, CA 94558; and Department of Fish and Wildlife, 4665 Lampson Avenue, Los Alamitos, CA 90720; where the Commission will consider a second extension request for a period of 90-days. It is estimated that this second 90-day extension will allow for continued discussion, adoption and filing of the regular rulemaking currently being considered to make these regulations permanent.**

## Regulatory Language

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

### **Section 8.01. Special ~~Gear Provisions~~~~[Repealed]~~ 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.



SOUTH SAN JOAQUIN  
IRRIGATION DISTRICT

BOARD OF SUPERVISORS

2016 MAR 21 A 11:22



March 14, 2016

Supervisor Dick Monteith  
Stanislaus County Board of Supervisors  
1010 10th St.  
Modesto, CA 95353

Dear Supervisor Monteith,

Both the State of California and United States government invest a tremendous amount of money and regulatory focus on protecting endangered salmon species, but other than additional flow requirements, they have done little to address other stressors that affect salmon populations, such as predation by introduced, non-native fish species.

The scientific understanding of the role predator fish have in low salmon-survival numbers in California rivers and waterways has advanced tremendously since the 1990s through a number of studies by federal agencies and independent researchers. However, fishery management practices have not kept pace, and outdated legislation and regulations actively work against efforts to restore salmon and steelhead populations in the state.

We are writing today to share recent testimony before the U.S. House of Representatives by one of the leading experts on fish predation, and ask for your support to not only continue studies on this matter, but more importantly to support regulatory and legislative changes to actively implement predator suppression programs in vulnerable California waterways. Such efforts are already under way in Oregon and Washington, and are much needed in California.

Politically, there is growing recognition of the problem of predator fish. In 2015, the House of Representatives passed an amendment by Rep. Jeff Denham to focus on the predation problem, and Sen. Dianne Feinstein's recently introduced water bill has specific language to require the removal of predator fish from the Stanislaus River to study the effects such actions would have on salmon numbers. Your support of these and similar measures would not only benefit endangered salmon, but also promote effective ecological water management that benefits the environment, the economy, and the people of California.

At Oakdale and South San Joaquin Irrigation Districts, we are intensely focused on the health of our watershed and waterways. We have worked extensively with Doug Demko, president of FISHBIO, a fisheries consulting firm and one of the leading experts on non-native fish predation. His Feb. 10 testimony before the House Subcommittee on Water, Power, and Oceans is enclosed with this letter. Links to videos of his testimony, as well as Rep. Denham's and Sen. Feinstein's legislation are below.

We thank you in advance for your continued attention and support toward implementation of programs such as these that will provide benefits for agriculture and environment alike.

Rep. Denham's Amendment to H.R. 2578 and Sen. Feinstein's Comprehensive Water Bill: (Secs. 201-204 focus on predator fish) can be found here: <http://www.savethestan.org/predation-legislation/>  
Doug Demko's Feb. 10, 2016 Testimony Highlights can be found here: <http://www.savethestan.org/doug-demko-testimony/>

Yours Truly,

A handwritten signature in black ink, appearing to read "Peter M. Rietkerk".

Peter M. Rietkerk  
General Manager, SSJID

A handwritten signature in black ink, appearing to read "Steve Knell".

Steve Knell  
General Manager, OID

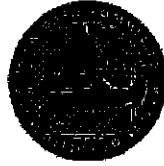


**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
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STATE OF CALIFORNIA  
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##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



*Wildlife Heritage and Conservation*  
*Since 1870*

### **15 Day Notice of California Notice Register 2016, No.2-Z, Z-2015-1228-03** **Re: Mammal Regulations for the 2016-2017 Seasons**

**March 30, 2016**

This is to provide you with a 15 day continuation notice of the final proposed data supplements affecting final tag quotas relative to amending sections 362, Big Horn Sheep; 363, Antelope; 364, Elk and 364.1 SHARE Elk Hunts, Title 14, California Code of Regulations, relating to the proposed regulations for "Mammal Regulations for the 2016-2017 Seasons" which was published in the California Regulatory Notice Register on January 8, 2016, Register 2016, No. 2-Z; OAL Notice File No. Z-2015-1228-03.

The date of the public hearing related to this matter, and associated deadlines for receipt of oral or written comments at the meeting to be held on April 14, 2016 in Santa Rosa has not changed from the original notice.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx#265>.

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

Sincerely,

/s/  
Jon D. Snellstrom  
Associate Governmental Program Analyst

Attachment

2016 APR -5 A 10:27

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

BOARD OF SUPERVISORS

2016 APR 11 AM 11:03  
**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 215, 219, 220, 713, 1050, 2365, 7071, 7072, 7075, 7078, 7082, 8254, and 8259, of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 207, 215, 220, 1050, 2365, 7050, 7055, 7056, 7071, 7075, 7078, 7852.2, 8043, 8046, 8250, 8250.5, 8254, 9002, 9002.5, 9005, 9006, and 9010 of said Code, proposes to amend Subsections (b) and (g) of Section 29.80, Amend Subsections (a) and (c) and Add Subsection (f) of Section 29.90, Amend Sections 121, 121.5, 122, and 705, Add Article 5, Sections 54.00, 54.01, 54.02, and 54.03, And Add Sections 122.1, and 122.2, Title 14, California Code of Regulations, Title 14, California Code of Regulations, relating to California Spiny Lobster Fishery Management Plan Implementing Regulations

**Informative Digest/Policy Statement Overview**

Under current regulations, the management of the California spiny lobster fishery is contained under multiple sections (sections 29.80, 29.90, 29.91, 121, 121.5 and 122) of Title 14 of the California Code of Regulations (CCR). Section 29.80 provides general gear restrictions for the recreational take of crustaceans. Section 29.90 provides recreational fishery regulations specific to spiny lobster with report card requirements for the recreational fishery found in Section 29.91. Section 121 regulates the possession of spiny lobster during the closed season. Section 121.5 regulates the processing of spiny lobster. Section 122 provides regulations for the commercial fishery, including permit requirements, gear provisions, trap servicing requirements, restricted fishing areas, permit transfers, and logbook requirements.

In accordance with the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code (FGC) Sections 7050-7090), regulations are proposed to implement a California Spiny Lobster Fishery Management Plan (FMP) and to amend existing recreational and commercial spiny lobster fishing regulations to manage the spiny lobster resource at a sustainable level and support orderly fisheries. It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State (FGC Section 7050(b)). The MLMA contemplates the management of state fishery resources through FMPs developed by the Department of Fish and Wildlife (Department) and adopted by the Fish and Game Commission (Commission) (FGC sections 7072, 7075 and 7078).

FGC subsection 7071(b) provides authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery. To implement the conservation and management measurements identified in the California Spiny Lobster FMP, including a proposed trap limit program, the implementing regulations of this FMP will render the following sections of the FGC inoperative once they are adopted:

- 1) FGC sections 8251, 8252, and 8258. These sections prescribe the commercial season length, size limit, and list the Districts where commercial lobster traps may be used. The FMP contemplates changes to season length, minimum size and district closures as possible future conservation and management measures. The commercial season length and size limit will be moved into Title 14, CCR, reflecting the Commission's authority to make future adjustments.

- 2) FGC sections 7857(e), 7857(j), 8102, 8103, and 8254(c). These sections state the conditions for issuing and transferring commercial fishing permits and lobster operator permit fees. Each will be made inoperative as they apply to the spiny lobster fishery to be consistent with the commercial spiny lobster limited entry fishery permit program described in the FMP and proposed trap limit program.
- 3) FGC Section 9004: This section requires commercial fishermen to service any deployed trap every 96 hours. The proposed trap servicing regulation in new Section 122.2 will extend the servicing requirement to every 168 hours. As such, this section will be rendered inoperative as applied to the spiny lobster fishery.

Upon adoption by the Commission, the California Spiny Lobster FMP will establish a management program for the spiny lobster recreational and commercial fisheries and detail the procedures by which the spiny lobster resource will be managed by the Department. The proposed regulations would implement the FMP in accordance with the policy goals enumerated in the MLMA. The proposed implementing regulations are divided into three parts: 1) new regulations to implement the FMP, 2) amendments and additions to the recreational fishing regulations, and 3) amendments and additions to the commercial fishing regulations. The following is a summary of the proposed changes to Title 14, CCR:

- 1) Establish a new Article in Chapter 5.5, Subdivision 1, Division 1, Title 14, CCR, and add new sections 54.00, 54.01, 54.02, and 54.03. The proposed new sections will:
  - a. describe the purpose and scope of the California Spiny Lobster FMP;
  - b. provide relevant definitions used in the California Spiny Lobster FMP;
  - c. describe management processes and timing; and
  - d. describe the harvest control rule (HCR) as the management basis for the California Spiny Lobster FMP.
- 2) Amendments are proposed to existing recreational lobster fishery regulations in subsections (b) and (g) of Section 29.80 and subsections (a), (c), and (f) of Section 29.90. If adopted, the proposed amendments will:
  - a. Provide an option to require hole-punching or fin-clipping of recreationally caught lobsters, with commercial market restrictions, to distinguish recreational catch from commercial catch for enforcement purposes.
  - b. Delay the start of the recreational season six hours from the current start time of 12:01 a.m. to 6:00 a.m. for safety purposes.
  - c. Require buoy marking of hoop nets used south of Point Arguello for identification and enforcement purposes.
  - d. Clarify existing language on the possession of a hooked device while taking lobster. This regulatory change will provide clarification for both recreational divers and enforcement.
  - e. Clarify measuring requirements in order to allow for measuring lobster aboard a boat. The proposed change will allow hoop netters to bring spiny lobster aboard a vessel where they can be measured safely.
  - f. Make editorial changes to improve clarity of existing regulations.
- 3) Amendments to the commercial fishing are proposed to sections 121, 121.5, 122, and 705 as well as the addition of new sections 122.1 and 122.2. If adopted, the proposed amendments will:

- a. Implement a new trap limit program, effective October 2017, to specify 300 traps per lobster operator permit, establish lobster trap tags, new buoy marking requirements, and lost trap replacement (i.e., "catastrophic trap tag loss") measures. The establishment of a trap limit program will optimize and create a more orderly commercial fishery as well as provide improved understanding of the amount gear used in the fishery.
- b. Allow permittees to possess up to two lobster operator permits. The possession of two lobster operator permits will allow a commercial fisherman to deploy a maximum of 600 traps in accordance with the proposed trap limit program.
- c. Allow permittees to retrieve up to six (6) traps of another lobster operator permit holder that were lost, or damaged lobster traps per fishing trip to help reduce potential impact of fishing gear on living marine resources and underwater habitat.
- d. Require Department approval of a waiver request for one lobster operator permit holder to service the trap of another. The proposed regulation will provide clear rules for requesting a waiver and improve regulatory enforcement.
- e. Require each fisherman who holds a lobster operator permit to submit an end of the season trap loss affidavit for each permit they hold at the end of each season to estimate gear loss in the fishery.
- f. Extend the maximum trap service requirement from four (4) to seven (7) days to provide fishermen more flexibility to service their gear and for safety purposes.
- g. Extend the pre- and post-season gear deployment periods from six (6) to nine (9) days for safety purposes.
- h. Extend the lobster operator permit holder death provision from one (1) to two (2) years to provide more time to transfer the lobster operator permit.
- i. Update permit renewal and transfer regulations for clarity and consistency with the proposed trap limit program.
- j. Update description of restricted fishing areas with latitude and longitude coordinates for clarification purpose.
- k. Provide clarification for identifying abandoned traps in state waters.
- l. Provide modifications to the existing fishing logbook format to improve data collection.
- m. Provide an option that would prohibit the sale of hole-punched or tail-clipped lobster in the markets for enforcement purposes.
- n. Establish fees for lobster operator permit and trap tags. Currently, lobster operator permit fees are located in FGC Section 8254(c), however, this code section will be rendered inoperative as part of the CA Lobster FMP implementing regulations as needed to implement the trap limit and trap tag program for the 2017-2018 lobster season.
- o. Clarify that all lobster operator permit holder fishing jointly on one vessel will be liable for any violation from that vessel.
- p. Clarify existing language on the use and possession of SCUBA gear in the commercial fishery.
- q. Make editorial changes to improve clarity of existing regulations.

The proposed regulations were drafted to serve the sustainability and social policy objectives enumerated in FGC Sections 7050, 7055, and 7056. The Commission evaluated whether there were any other regulations on this area and has found that these are the only regulations

concerning the California Spiny Lobster Fishery Management Plan. Therefore, the proposed regulations are not inconsistent or 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 Flamingo Conference Resort and Spa, 2777 Fourth Street, Santa Rosa, California, on Wednesday, April 13, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Bakersfield, California, on Wednesday, June 22, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. The exact location of this meeting has not yet been determined. As soon as this information is available but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published in the California Regulatory Notice Register and published on the Commission's website. It is requested, but not required, that written comments be submitted on or before June 9, 2016, at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed or emailed to the Commission office must be received before 12:00 noon on June 17, 2016.** Written and oral comments may be received at the **June 22, 2016** hearing. No comments will be received after the hearing. 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, Michael Yaun, Acting 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 Michael Yaun or Sheri Tiemann at the preceding address or phone number. **Tom Mason, Senior Environmental Scientist, Department of Fish and Wildlife, [(562) 342-7107 or [Tom.Mason@wildlife.ca.gov](mailto:Tom.Mason@wildlife.ca.gov)], has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, the proposed regulatory language, the notice, and other information concerning the proposed regulation, may be obtained from the address above and will also 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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action will not substantially increase compliance costs, is not anticipated to impact harvest quantities, and only applies to a fishery that is unique to the state of California. The commercial spiny lobster fishery extends from Point Conception in Santa Barbara County to the U.S./Mexico border. The recreational spiny lobster fishery covers the same range but also extends further north into San Luis Obispo County.

- (b) **Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:**

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses because the proposed action will not significantly increase costs or reduce harvest quotas. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and spiny lobster resource.

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

The Commission anticipates an increase in the commercial lobster operator permit fee due to the proposed trap tag program to be approximately \$395 per permit. Permit holders may have the potential for a substantial gain from expanded permit transfer options and potential fuel savings with the increase in time for the maximum trap servicing requirement. The Commission is not aware of any cost impacts in the recreational lobster fishery, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:** None.
- (e) **Nondiscretionary Costs/Savings to Local Agencies:** None.
- (f) **Programs Mandated on Local Agencies or School Districts:** None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

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: March 28, 2016

Michael Yaun  
Acting Executive Director