

TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED RULEMAKING
AUGUST 14, 2015

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to adopt the regulations described below regarding nesting birds and birds of prey after considering all comments, objections, and recommendations regarding the proposed action. The Department invites interested persons to present statements or arguments with respect to alternatives to the regulations at the scheduled hearing or during the written comment period.

PUBLIC HEARING

The Department will hold a public hearing on September 28, 2015, from 10:00 a.m. to 11:30 a.m., in the Resources Auditorium within the Resources Building located at 1416 9th Street, Sacramento, California. The Resources Auditorium is wheelchair accessible. At the public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. All written comments must be received by the Department at the office below not later than 5:00 p.m. on September 28, 2015. All written comments must include the true name and mailing address of the commenter.

Written comments may be submitted by mail, fax, or e-mail as follows:

California Department of Fish and Wildlife
Regulations Unit
Attn: Scott Barrow
1416 9th Street, Room 1342-A
Sacramento, CA 95814
Telephone: (916) 653-4681
Fax: (916) 653-9890
E-mail: Regulations@wildlife.ca.gov.

Authority: Sections 3503 and 3503.5, Fish and Game Code; and Section 21083, Public Resources Code.

Reference: Sections 1601, 1602, 1603, 1611, 1614, 2000, 3511, Fish and Game Code; and Sections 4629.6(c), 21060.3, 21083, and 21166, Public Resources Code.

INFORMATIVE DIGEST (Policy Statement Overview)

Add Section 681 to Title 14, CCR.

For many years, the California Department of Fish and Wildlife (Department) has considered various approaches to pragmatically implement the prohibitions in Fish and Game Code sections 3503 and 3503.5 related to nesting birds and birds of prey. The Department involved various stakeholders who brought different experiences and perspectives to the dialogue. Through this outreach, combined with past Department implementation of the statutes, the Department has developed a clear understanding of the challenges these prohibitions present to agriculture, forestry, the building industry, transportation agencies, utilities and others, as well as the concerns held by environmental and conservation organizations regarding the extent to which different interpretations of these statutes present risks to nesting birds.

The Department's ongoing interaction with our stakeholders helped clarify the Department's approach regarding the most reasonable interpretation of these statutes that implements the Legislature's intent and balances stakeholder concerns with the Department's conservation mission. As a result, the Department developed Title 14, California Code of Regulations (CCR), regulations that formalize the interpretations that the Department has traditionally followed in making California Environmental Quality Act (CEQA) recommendations, permit conditions and enforcement practices for implementing these FGC statutes.

Proposed Regulations

Subsection 681(a), Title 14, CCR, provides the purpose and scope of the proposed regulations to implement FGC sections 3503 and 3503.5 and Public Resources Code Section 21083 and further describes the Department's consultation role in the CEQA regarding FGC sections 3503 and 3503.5. The information provides stakeholders and the general public with necessary detail to improve understanding of the FGC statutes and Title 14, CCR, regulations.

Subsection 681(b), Title 14, CCR, defines terminology used in the statutes and proposed regulations. The terms used in FGC sections 3503 and 3503.5 are subject to varied interpretation and application depending on the experience, background and views of the individual, or entity. These definitions are necessary to provide stakeholders and the general public a better understanding of key terms in order to fully comply with the FGC and regulations, as well as to ensure that the regulations are clear and legally enforceable.

Subsection 681(c), Title 14, CCR, lists the exceptions to the proposed regulations. These exceptions do not affect the Department's authority pursuant to any other provision of the FGC or State compliance with federal regulations. The exceptions are necessary to reduce possible conflict between the proposed regulations and other Department authorities in State statutes and regulations.

Subsection 681(d), Title 14, CCR, provides the CEQA Thresholds of Significance to determine the potential significance of impacts related to the take, possession, needless destruction or destruction of native bird nests, eggs, or birds of prey. These thresholds provide lead agencies, stakeholders and the general public with sufficient detail to understand and comply with CEQA regulations along with the FGC statutes and Title 14, CCR, regulations.

Benefits of the Proposed Regulations

The proposed regulations provide clarity to terms that are subject to diverse interpretations by stakeholders, the general public and Department staff. Department scientists and wardens regularly advise the public on compliance with the prohibitions and enforce the statutes when violations occur.

The proposed regulations' definitions are generally consistent with past interpretations by Department scientists and wardens. However, these regulations provide a standard for general application that will provide for consistent interpretation, will efficiently use Department staff resources, and will enhance enforcement.

The proposed regulations provide several exceptions to the prohibitions where other regulatory mechanisms serve similar purposes, thereby reducing redundant legal requirements. One exception to the prohibitions is for an emergency, which word is already defined in the Public Resources Code. This exception provides a pragmatic and reasonable recognition of extenuating circumstances. Finally, this furthers the goal of the Department which is to manage/protect California's birds of prey and native birds and the environments on which they depend on, and for the public's enjoyment of their ecological values and purposes while maintaining health and safety standards.

Evaluation of Incompatibility with Existing Regulations

The Department has searched the CCR for any other regulations governing the take, possession, or needless destruction of nests, eggs or birds of prey.

The Board of Forestry and Fire Protection (Board) has promulgated rules that provide general and specific protection measures for nest sites of several specific bird species that the Board has formally designated as "Sensitive" species. The Board regulations generally provide more protection for habitat surrounding the nest than do these proposed regulations.

Various sections of the Fish and Game Code, and related regulations in Title 14, regulate the take of wildlife, including candidate, threatened or endangered species. These draft regulations are specifically written to be compatible with those authorities and, in some cases, provide exceptions to otherwise stated prohibitions where take is authorized in accordance with those authorities.

The Department has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. As the State's trustee agency for fish and wildlife, the Department has the primary authority to promulgate regulations

regarding the protection of nesting birds and birds of prey.

DOCUMENTS INCORPORATED BY REFERENCE: None
DISCLOSURES REGARDING THE PROPOSED ACTION:

Mandate on local agencies or school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary costs or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: There are no related costs or savings in Federal Funding to the State.

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 businesses, including the ability of California businesses to compete with businesses in other states. The regulations are intended to formalize the interpretations that the Department has traditionally followed in making CEQA recommendations, permit conditions, and enforcement practices for implementing these FGC statutes.

Effect on small business: The Department has determined that the proposed regulations are unlikely to have a significant statewide adverse economic impact affecting small businesses because it will not create any new requirements. The regulations are intended to formalize the interpretations that the Department has traditionally followed in making CEQA recommendations, permit conditions and enforcement practices for implementing the FGC statutes. .

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

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, the expansion of businesses in California, or benefits to worker safety. The regulations are intended to formalize the interpretations that the Department has traditionally followed in making CEQA recommendations, permit conditions and enforcement practices for implementing the FGC statutes.

Benefits to the Health and Welfare of California Residents:

The Department anticipates benefits to the health and welfare of California residents through more uniform application of statutes regulating the take and possession of bird nests, eggs and birds of prey as a result of the proposed action.

Benefits to the State's Environment:

The proposed regulations should benefit the state's environment by clarifying and increasing consistency in the application of nest regulations in the state.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as 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.

MITIGATION MEASURES REQUIRED BY REGULATORY ACTION:

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

California Department of Fish and Wildlife
Regulations Unit
Attn: Scott Barrow
1416 9th Street, Room 1342-A
Sacramento, CA 95814
Telephone: (916) 653-4681
Fax: (916) 653-9890
Comments or questions can also be submitted via email at the following address:
Regulations@wildlife.ca.gov.

The backup contact person for these inquires is:

California Department of Fish and Wildlife
Regulations Unit
Attn: Craig Martz
1416 9th Street, Room 1342-A
Sacramento, CA 95814
Telephone: (916) 653-4681

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Barrow at the above address.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:

The Department will have the entire rulemaking file available for inspection and copying at its offices at the above addresses. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, the Economic Impact Assessment, the Economic and Fiscal Impact Assessment (STD. Form 399).

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

Website Access: The entire rulemaking file is available at:
<https://www.wildlife.ca.gov/Notices/Regulations>

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Scott Barrow as indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Scott Barrow as indicated above.