

Regulatory Language

Section 681, Title 14, CCR, is to be added as follows:

Section 681. Take, Possess or Destroy Any Bird Nests or Eggs, or Take Birds in the Orders Falconiformes, Strigiformes or Accipitriformes.

(a) Purpose and Scope of Regulations.

These regulations implement Fish and Game Code sections 3503 and 3503.5 and Public Resources Code Section 21083 and further describe the department's consultation role in the California Environmental Quality Act (CEQA) regarding Fish and Game Code sections 3503 and 3503.5. These regulations do not affect the department's authority pursuant to any other provision of the Fish and Game Code, including but not limited to sections 2080, 3511 and 3513, or the department's wildlife resource conservation policy as described by, for example, Fish and Game Code Section 1802, which directs the department's attention to conservation, protection, and management necessary for biologically sustainable populations of species.

(b) Definitions.

(1) Bird of prey is defined as any native bird within the orders Falconiformes, Strigiformes or Accipitriformes.

(2) Destroy is defined as any action that physically modifies a nest from its previous condition and adversely affects the survival of a bird of prey or its eggs.

(3) Feasible shall have the same meaning specified in Section 15364 of these regulations.

(4) Native bird is defined as any bird species determined by the department to occur naturally in California as a resident, regular migrant or occasional migrant species.

(5) Needlessly Destroy is defined as any action that physically modifies the nest of a native bird from its previous condition and adversely affects the survival of the native bird's offspring when it is feasible to avoid such effect until eggs, nestlings, or juvenile birds no longer require the nest for survival. Actions to prevent or mitigate an emergency as defined in Public Resources Code Section 21060.3 are not needless.

(6) Nest is defined as a site or a structure built, maintained or used by a native bird, which is occupied by eggs or nestlings, or is otherwise essential to the survival of a juvenile bird.

(7) Possess means to collect any nest or egg, or physically remove or relocate a nest or egg from a site where it is found or to maintain physical control of a bird of prey for any period of time.

(8) Site is defined as the specific spatial location that a native bird selects for egg laying purposes.

(9) Take shall have the same meaning specified at Fish and Game Code Section 86. Take does not apply to nests.

(c) Exceptions.

Neither Fish and Game Code sections 3503 nor 3503.5 prohibit the following actions:

(1) Actions meeting the criteria for take, possess, needlessly destroy or destroy when authorized by the U.S. Fish and Wildlife Service under terms of the Migratory Bird Treaty Act.

(2) Actions to prevent or mitigate an emergency as defined in Public Resources Code Section 21060.3.

(3) Actions otherwise meeting the criteria for take, possess, needlessly destroy or destroy when they impact the birds, nest, or eggs of candidate, threatened or endangered or other species if the take of that bird species is authorized pursuant to the California Endangered Species Act, the Natural Community Conservation Planning Act, or as otherwise provided by the Fish and Game Code or any regulations adopted pursuant thereto, including for example, approved Voluntary Local Programs or Safe Harbor Agreements.

(4) Actions authorized pursuant to a Lake and Streambed Alteration Agreement, an approved habitat restoration or enhancement project pursuant to Fish and Game Code sections 1652 or 1653, or an approved coho salmon habitat enhancement project pursuant to Fish and Game Code Section 6953.

(d) California Environmental Quality Act Thresholds of Significance.

Where acting as a State Lead or Responsible agency, the department will conform with Public Resources Code Section 21166, CEQA Guidelines Section 15096 of these regulations, and rely on the following thresholds of significance for impacts related to take, possession, needless destruction or destruction of native bird nests, eggs or birds of prey.

A significant impact on avian biological resources will occur if:

(1) The project has a substantially adverse effect, either directly or through habitat modifications, on any population of a native bird species meeting the standards of subsections (c) or (d) of Section 15380 of these regulations,

(2) The project has the potential to substantially reduce the habitat, restrict the range or cause a population of a native bird species to drop below self-sustaining levels,

(3) The project is likely to have long-term adverse consequences for one or more populations of native bird species, or

(4) The project has direct or indirect environmental effects on native bird species that are individually limited but cumulatively considerable.

NOTE: Authority cited: 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.