

## STAFF SUMMARY FOR APRIL 26-27, 2017

**8. UPLAND GAME BIRD****Today's Item****Information** ☒**Action** ☐

Discuss proposed changes to upland game bird hunting regulations.

**Summary of Previous/Future Actions**

- |                                     |                                  |
|-------------------------------------|----------------------------------|
| • WRC vetting                       | Sep 21, 2016; WRC Sacramento     |
| • Notice hearing                    | Feb 8-9, 2017; Rohnert Park      |
| • <b>Today's discussion hearing</b> | <b>Apr 26-27, 2017; Van Nuys</b> |
| • Adoption hearing                  | Jun 21-22, 2017; Smith River     |

**Background**

The regulations in Section 300, Title 14, California Code of Regulations (CCR), provide general hunting seasons for taking resident and migratory upland game birds. DFW is recommending the following regulation changes:

- Amend subsection 300(a)(1)(D)4. to adjust the annual number of general season sage grouse hunting permits by zone for the 2017-18 season.
- Make non-substantive changes to the authority and reference sections, which are the result of changes to the Fish and Game Code by SB 1473 (Statutes 2016; Chapter 546) that took effect on Jan 1, 2017.

**Significant Public Comments**

- Support sage grouse recommendations (Exhibit 3)
- Request for 0 sage grouse limit (Exhibit 4)

**Recommendation (N/A)****Exhibits**

1. [Initial statement of reasons](#)
2. [DFW memo, received Jan 12, 2017](#)
3. [Letter from National Wild Turkey Federation, received Feb 7, 2017](#)
4. [Email from Center for Biological Diversity, received Apr 13, 2017](#)

**Motion/Direction (N/A)**

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

Amend Sections 300  
Title 14, California Code of Regulations  
Re: Upland Game Birds

I. Date of Initial Statement of Reasons: December 13, 2016

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: February 8, 2017  
Location: Rohnert Park, CA

(b) Discussion Hearing: Date: April 26, 2017  
Location: Van Nuys, CA

(c) Adoption Hearing: Date: June 21, 2017  
Location: Smith River, CA

III. Description of Regulatory Action:

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

The Fish and Game Commission (Commission) annually considers the recommendations of the Department of Fish and Wildlife (Department) in establishing upland game bird regulations. Section 300 provides definitions, hunting zone descriptions, season opening and closing dates, and daily bag and possession limits for resident and migratory upland game birds.

A limited number of permits are issued for sage grouse, and that number is based on annual population surveys. Concerns about the potential effects of hunting to sage grouse through additive mortality have been expressed in the scientific literature, including studies from California. The Department has responded to these concerns by recommending highly conservative permit numbers for the last 10 years. The permit system used in California is considered one of the best-controlled hunts in sage grouse range.

In 2010, the United States Fish and Wildlife Service (USFWS) determined that Greater sage grouse were “warranted, but precluded” for protection under the Endangered Species Act (ESA) both statewide and as a Distinct Population Segment (DPS) in Mono County. In 2015, the USFWS further determined that sage grouse did not need to be listed under ESA largely

because of conservation plans and federal land use amendments that reduced the threats to the species.

In 2012, the Commission took emergency action because of the Rush Fire, which encompassed more than 272,000 acres almost entirely within the East Lassen Hunt Zone, by reducing the number of sage grouse permits for both Lassen hunt zones to zero. Because of substantial breeding population declines in spring 2013 following the fire, the Department did not recommend issuing any hunting permits in 2013.

The Commission, acting on the recommendation of the Department, has adopted the same permit numbers for the past three sage grouse seasons:

- a. East Lassen: 0 (2-bird) permits
- b. Central Lassen: 0 (2-bird) permits
- c. North Mono: 30 (1-bird) permits
- d. South Mono: 0 (1-bird) permits

For the 2017-2018 season, the Department will present the Commission a recommendation for permits based on the spring 2017 lek counts. A lek is a communal area in which two or more male sage grouse perform courtship displays to mate with females. Male sage grouse reliably attend these leks throughout the breeding season. The Department performs multiple counts of all known leks in California, including leks both within hunt zones and in non-hunted areas. These lek counts are used to estimate population size and a population model expands the count of males to predict the size of the fall population.

#### METHODS FOR POPULATION ESTIMATION:

The Department will use the following parameters and assumptions to estimate population size in the spring and project it at the time of the hunting season (the second Saturday in September extending for 2 days):

- a) Male population size counted in the spring is 1.1 x peak lek attendance (the most males counted) from at least three surveys of each lek statewide. In other words, the Department assumes that 90% of the males are visibly counted on each lek.
- b) The sex ratio for the population is 1:1, assuming there are an equal number of females as males counted.
- c) The recruited population (adult birds) experiences 15% mortality between spring and fall.
- d) The high model assumes the population produces 1.2 chicks per female (this model is used to provide a range of population size, but is not used to derive permit numbers).

- e) The low population model assumes the population produces 0 chicks per female (this model is used to derive permit numbers).

Both the low and high fall population projections are considered conservative by the Department, particularly with regard to the female population size and chick production. Sex ratios of 1:1 are used as a conservative approach, but sage grouse often have skewed sex ratios with more females than males. The low population projection, assuming no reproduction, is not a likely scenario except for the most extreme possible conditions, and the Department is using this model to avoid any potential errors in assumption of chick production.

The number of permits proposed will not exceed 5% of the projected fall population size, which is among the most conservative scientific recommendations for allowable harvest. In addition to population size, the Department will consider population trajectory in its recommendation, and will not recommend any permits for populations that are in decline and below the long-term average for that hunt zone. The Department has not recommended any permits in either of the Lassen hunt zones since 2012 or the South Mono Zone since 2013 because of concerns about downward population trajectories and to allow these populations time to recover from the effects of wildfire and drought. The Department's conservative approach to estimating spring populations and projecting fall populations is designed to underestimate populations and there are likely more grouse on the landscape.

The numbers of permits ultimately recommended for each hunt zone will be based on the following criteria:

- a) Size and trend of the spring breeding population in each hunt zone based on lek counts conducted in March and April.
- b) The allowable harvest level will not exceed 5% of the predicted fall population.
- c) If the allowable harvest in any zone provides for a minimum number of permits to be recommended in any zone of 5 permits or less, no permits will be recommended for that zone.

#### PROPOSED REGULATIONS:

Amend subsection 300(a)(1)(D)4.: Adjust the annual number of General Season sage grouse hunting permits by zone for the 2017-18 season.

The regulation as set forth in this ISOR proposes a range from which the final numbers of sage grouse permits will be determined. A range, instead of a specific number, is necessary at this time because the final number of permits cannot be determined until the Department conducts spring lek

counts in March and April as previously described. Based on recent population size in each of the hunt zones, the proposed ranges are as follows:

- a. East Lassen Zone: [0 - 25] (2-bird) permits
- b. Central Lassen Zone: [0 - 15] (2-bird) permits
- c. North Mono Zone: [0 - 45] (1-bird) permits
- d. South Mono Zone: [0 - 20] (1-bird) permits

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

Authority cited: Sections 200, 203, 265 and 355, Fish and Game Code.

Reference: Sections 200, 203, 203.1, 215, 220, 265, 355 and 356, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.
- (d) Identification of Reports or Documents Supporting Regulation Change: None.
- (e) Public Discussions of Proposed Regulations Prior to Notice publication: None.

#### IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No Alternatives were identified.

- (b) No Change Alternative:

Without a regulation change to subsection 300(a)(1)(D)4:

Sage grouse permit numbers would not change from 2016 and permits for 2017 would not be calculated based on current year data.

- (c) Alternatives considered but rejected:

No Alternatives were identified

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

V. Mitigation Measures Required by Regulatory Action:

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

VI. Impact of Regulatory Action:

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

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the regulations propose only minor changes not affecting business.

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

The Commission does not anticipate any impacts on the creation or elimination of jobs or businesses in California or on the expansion of businesses in California; and, does not anticipate benefits to worker safety, because the regulations propose only minor changes not affecting jobs.

The Commission anticipates benefits to the health and welfare of California residents. The proposed regulations are intended to provide continued recreational opportunity to the public. 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 environment by the sustainable management of California's upland game resources. The fees that hunters pay for licenses and stamps are used for conservation.

(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.

VII. Economic Impact Assessment:

The following amendments to the regulations are proposed:

Amend subsection 300(a)(1)(D)4.: Adjust the annual number of General Season sage grouse hunting permits by zone for the 2017-18 season.

- (a) Effects of the regulations on the creation or elimination of jobs within the state:

The proposed regulations will not affect the creation or elimination of jobs because there are no changes in fees, addition of fees, or addition of costs to businesses or individuals. Generally, positive impacts to jobs and/or businesses that provide services to hunters are anticipated with the adoption of the proposed hunting regulations for the 2017-18 season. The U.S. Fish and Wildlife National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California (revised Feb. 2014) estimates that small game hunters contributed about \$143 million to businesses in California during the 2011 small game hunting season. The long-term intent of the proposed regulations is to sustainably manage upland game bird populations, which will additionally support the long-term viability of the primarily small businesses that serve hunting activities. The 2014 report is posted on the US Dept. of Commerce website at [http://www.census.gov/prod/013pubs/fhw11\\_ca.pdf](http://www.census.gov/prod/013pubs/fhw11_ca.pdf).

- (b) Effects of the regulations on the creation of new businesses or the elimination of existing businesses within the state:

The effect of the regulations on the creation of new businesses or the elimination of existing businesses within the state will be neutral. Minor variations in the number of sage grouse hunting permits as proposed in the regulations are, by themselves, unlikely to stimulate the creation of new businesses or cause the elimination of existing businesses. The number of hunting trips and the economic contributions from them are expected to remain more or less the same.

- (c) Effects of the regulations on the expansion of businesses currently doing business within the state:

The effect of the regulations on the expansion of businesses currently doing business within the state will be neutral. The long-term intent of the proposed regulations is to sustainably manage upland game bird populations, and consequently, the long-term viability of small businesses that serve recreational upland game bird hunters.

(d) Benefits of the regulations to the health and welfare of California residents:

Hunting is an outdoor activity that can provide several benefits for those who partake in it and for the environment as well. The fees that hunters pay for licenses and stamps are used for conservation. In addition, the efforts of hunters can help to reduce wildlife depredation on private lands. Hunters and their families benefit from fresh game to eat, and from the benefits of outdoor recreation. People who hunt have a special connection with the outdoors and an awareness of the relationships between wildlife, habitat, and humans. With that awareness comes an understanding of the role humans play in being caretakers of the environment. Hunting is a tradition that is often passed on from one generation to the next creating a special bond between family members and friends.

(e) Benefits of the regulations to worker safety.

The regulations will not affect worker safety because they do not address working conditions.

(f) Benefits of the regulations to the state's environment:

It is the policy of this state to encourage the conservation, maintenance, and utilization of upland game bird resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of upland game birds to ensure their continued existence and the maintenance of a sufficient resource to support recreational opportunity. Adoption of scientifically-based upland game bird seasons, bag and possession limits provides for the maintenance of sufficient populations of game birds to ensure those objectives are met.

(g) Other Benefits of the Regulations:

None



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

The regulations in Section 300, Title 14, California Code of Regulations (CCR), provide general hunting seasons for taking resident and migratory upland game birds. The Department is recommending the following regulation changes:

Amend subsection 300(a)(1)(D)4.: Adjust the annual number of General Season sage grouse hunting permits by zone for the 2017-18 season.

Additionally, non-substantive changes to the authority and reference sections, are the result of changes to the Fish and Game Code by SB 1473 which took effect on January 1, 2017.

### **Benefits of the Proposed Regulations**

Adoption of sustainable upland game seasons, bag and possession limits, and authorized methods of take provides for the maintenance of sufficient populations of upland game birds to ensure their continued existence.

### **Non-monetary Benefits to the Public**

The Commission anticipates benefits to the health and welfare of California residents through the sustainable management of sage grouse populations. The Commission does not anticipate non-monetary benefits to worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

### **Consistency and Compatibility with Existing Regulations**

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to Section 300 are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate hunting regulations.

## REGULATORY LANGUAGE

Section 300, Title 14, CCR, is amended to read as follows:

### **§ 300. Upland Game Birds.**

- (a) Resident Upland Game Birds
- (1) General Seasons: Shotgun; Crossbow; and Pistol/Revolver for Sooty/Ruffed Grouse Only; Bag and Possession Limits and Open Areas  
(see Authorized Methods of Take, Section 311)

*. . . [No Changes subsections 300(a)(1)(A) through (a)(1)(D)3.]*

#### **4. Number of Permits:**

- a. East Lassen Zone:      0    [0 - 25]    (2-bird) permits
- b. Central Lassen Zone:    0    [0 - 15]    (2-bird) permits
- c. North Mono Zone:       30   [0 - 45]    (1-bird) permits
- d. South Mono Zone:       0    [0 - 20]    (1-bird) permits

*. . . [No Changes subsections 300(a)(1)(D)5. through (b)]*

Note: Authority cited: Sections 200, 203, 265 and 355, Fish and Game Code.  
Reference: Sections 200, 203, 203.1, 215, 220, 265, 355 and 356, Fish and Game Code.

State of California  
Department of Fish and Wildlife

# Memorandum

RECEIVED  
CALIFORNIA  
FISH AND GAME  
COMMISSION

2017 JAN 12 AM 11:01

Date: January 9, 2017

To: Valerie Termini  
Executive Director  
Fish and Wildlife Commission

From: Charlton H. Bonham  
Director



Subject: **Agenda Item for the February 8-9, 2017, Fish and Game Commission Meeting**  
**Re: Request to Publish Notice of the Commission's Intent to Amend Section 300, Title 14, California Code of Regulations (CCR), Upland Game Birds**

The Department of Fish and Wildlife (Department) requests that the Fish and Game Commission (Commission) authorize publishing notice of its intent to amend Section 300, Title 14, CCR. The Department is proposing to amend subsection 300(a)(1)(D)4, adjusting the annual number of General Season sage grouse hunting permits by zone for the 2017-18 season. No other changes are proposed.

If you have any questions regarding this item, please contact T.O. Smith, Wildlife Branch Chief, at (916) 445-3555. The public notice should identify Scott Gardner, Senior Environmental Scientist, as the point of contact at (916) 801-6257 or [Scott.Gardner@wildlife.ca.gov](mailto:Scott.Gardner@wildlife.ca.gov).

## Attachments

ec: Stafford Lehr, Deputy Director  
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Valerie Termini, Executive Director  
January 9, 2017  
Page 2

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February 7, 2017

California Fish and Game Commission  
1416 9th Street, Room 1320  
Sacramento, CA 95814

Dear Fish and Game Commission President Eric Sklar:

It is our understanding that the California Department of Fish and Wildlife (hereafter as the Department) has been challenged on the management of sage grouse and sage grouse hunting in California. Please accept this letter as a statement of support of the Department's ability to manage wildlife species, including sage grouse, within the state.

The National Wild Turkey Federation (hereafter as NWTF) is one of the largest conservation organizations in the United States with more than 217,000 members nationwide, and more than 3,000 members in the state of California. The mission of the NWTF is "*Dedicated to the Conservation of the Wild Turkey and the Preservation of our Hunting Heritage.*" As such, the NWTF is a strong supporter of the North American Model of Wildlife Conservation (hereafter as the North American Model). Two key principles of the North American Model are (1) the best science available will be used as a base for informed decision making in wildlife management, and (2) wildlife will be managed in trust by government agencies.

Hunter harvest provides a valuable tool to state wildlife managers. Harvest data conveys important population abundance, distribution and population sex/age data that would not be attainable otherwise. Also, the Department's population estimates are extremely conservative. Based upon those conservative estimates, the allowable harvest level will not exceed 5% of the predicted fall population. All birds recruited in 2017 are strictly additive to the population, and are not accounted for in the harvest quota.

NWTF firmly supports California's statutory mandates and the precedence afforded in the North American Model regarding the state's right to manage the public's wildlife held in trust. NWTF maintains this as a core conservation value of our organization. Further, NWTF believes that the Department possesses the expertise to manage sage grouse populations using the best available science. NWTF views any restrictions put on the Department to manage these animals to be a direct threat to the continuing successful recovery of sage grouse and other wildlife in California as well as a threat to regulated, science-based hunting in the state.

On behalf of the National Wild Turkey Federation, thank you for the opportunity to comment on this important issue.

Sincerely,

Joe Pecs

California State Chapter President  
National Wild Turkey Federation

Cc: Charlton H. Bonham, Director, California Department of Fish and Wildlife

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National Wild Turkey Federation

P.O. Box 530 • 770 Augusta Road • Edgefield, South Carolina 29824 • Phone: (803) 637-3106 • Fax: (803) 637-0034

[www.nwtf.org](http://www.nwtf.org)



**VIA ELECTRONIC MAIL**

Fish and Game Commission  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
[fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov)

April 13, 2017

**Re:** Item #8, April 26, 2017 Agenda; Discuss proposed changes to upland game bird hunting regulations (Section 300, Title 14, CCR)

Dear Commissioners,

I am writing on behalf of the Center for Biological Diversity (“Center”) regarding Item #8 on the April 26, 2017 agenda listed as “Discuss proposed changes to upland game bird hunting regulations (Section 300, Title 14, CCR),” which includes hunting permits for sage grouse. According to the Initial Statement of Reasons submitted by the Department this item will be discussed both at the April and June meetings and will not be voted on until the June 21, 2017 meeting. The Center intends to submit additional comments on the proposed regulations for sage grouse hunting permits to the Commission for consideration at the June meeting after more information is made available by the Department regarding the 2017 lek counts, the number of permits issued in the 2016-2017 season, and the number of birds killed under those permits and the demographics of those birds killed. The Center provides the following comments to help inform the discussion at the April 26, 2017 meeting.<sup>1</sup>

The Initial Statement of Reasons for Regulatory Action (“ISOR”) recommends adopting a range for permits in each zone and states: “For the 2017-2018 season, the Department will present the Commission a recommendation for permits based on the spring 2017 lek counts.” (ISOR at 2.) Those lek counts are not yet available and therefore cannot inform the discussion at the April meeting. Moreover, the Department has not provided the Commission or the public with any information on the number of permits actually issued in 2016-2017 nor information on the number of birds killed and their demographics; this information is also needed to inform public comment and discussion.

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<sup>1</sup> The Center has previously submitted detailed letters to the Commission on July 23, 2015 and August 3, 2016 addressing the impacts of hunting on sage grouse and urging the Commission to end hunting of this bird in California to protect the remaining populations (available at [http://fgc.ca.gov/meetings/2016/Aug/Exhibits/SS\\_0825\\_Item\\_36\\_UplandGame.pdf](http://fgc.ca.gov/meetings/2016/Aug/Exhibits/SS_0825_Item_36_UplandGame.pdf) at pdf pages 35-175). Over 2,000 concerned citizens also sent letters to the Commission in 2016 urging the Commission to end hunting of sage grouse in California.

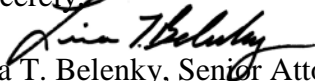
While the Center recognizes that the Department's 2017-2018 proposal reduces the high-end range for the number of permits that could be issued in each of the 4 zones from last year's proposal, we continue to object to these high-end range and urge the Commission to adopt zero permits in all zones. Specifically, the Center has serious concerns about the Department's proposal for the upland bird hunting regulations to provide for a range of permits for sage grouse in the 2017-2018 season for all zones with high-end limits of: 25 two-bird permits for the East Lassen zone; 15 two-bird permits for the Central Lassen Zone; 45 one-bird permits for the North Mono zone; and 20 one-bird permits for the South Mono zone.<sup>2</sup> While the ISOR claims that these are conservative numbers, nothing in the ISOR discussion shows that the Department has considered the impact of hunting at the high-end range in each of these zones on the sage grouse populations in each zone or the cumulative impact to the Bi-State sage grouse population, or sage grouse populations within California overall. Given the precarious status of this rare bird, the Center urges the Commission to reject the proposed range of permits and instead set the number of permits at zero for all zones in order to support sage grouse conservation.

Although hunting has not been identified as the *primary* reason for the decline of the sage grouse in California, it remains a factor that undermines conservation of this species. As the Department itself admits: "Concerns about the potential effects of hunting to sage grouse through additive mortality have been expressed in the scientific literature, including studies from California." (ISOR at 1.) Because the remaining populations of the sage grouse in California are generally small and isolated, any additive mortality from hunting can put them at risk of further decline and extinction from stochastic events along with other threats such as increased development within sensitive habitat.

The precautionary principle should inform the Commission's decisions on this matter and a zero permit limit for all sage grouse populations in California should be adopted for the 2017-2018 season.

The Center urges the Commission to reject the Department's proposal to amend the upland game regulations as to the sage grouse, and instead we urge the Commission to reduce all permit limits to zero. The Commission should act to conserve this species by eliminating hunting in all zones to protect the remaining California sage grouse populations which are facing multiple threats.

Sincerely,

  
Lisa T. Belenky, Senior Attorney  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
(510) 844-7107  
[lbelenky@biologicaldiversity.org](mailto:lbelenky@biologicaldiversity.org)

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<sup>2</sup> Regulatory Language provided for the proposed changes to 14 CCR §300(a)(1)(D):

4. Number of Permits: a. East Lassen Zone: ~~0~~ [0 - 25] (2-bird) permits b. Central Lassen Zone: ~~0~~ [0 - 15] (2-bird) permits c. North Mono Zone: ~~30~~ [0 - 45] (1-bird) permits d. South Mono Zone: ~~0~~ [0 - 20] (1-bird) permits