

STAFF SUMMARY FOR DECEMBER 6-7, 2017

6. USE OF DOGS**Today's Item****Information** ☐**Action** ☒

Adopt proposed changes to regulations for the use of GPS-equipped dog collars and treeing switches for dogs used to pursue/take mammals or for dog training.

Summary of Previous/Future Actions

- Notice hearing Apr 26-27, 2017; Van Nuys
- Discussion hearing Oct 11-12, 2017; Atascadero
- **Today's adoption hearing Dec 6-7, 2017; San Diego**

Background

In Apr 2016, FGC adopted changes to Section 265, to delete language restricting the use of global positioning system (GPS) collars and treeing switches for dogs aiding a hunter; this amendment effectively authorized the use of those devices as an aid in hunting. Subsequently a lawsuit was filed challenging the adoption alleging California Environmental Quality Act (CEQA) process deficiencies; FGC determined that further rulemaking may be necessary to resolve that lawsuit.

In Dec 2016, FGC directed staff to prepare a notice of intent to again amend Section 265 to reinstate the prohibition on the use of GPS collars and treeing switches, and requested that DFW staff develop an analysis of the impacts of both allowing GPS collars and treeing switches and prohibiting the use of that gear. DFW provided the requested analysis at FGC's Apr 13, 2017 teleconference meeting; the analysis did not identify any significant environmental effects associated with the use of GPS or treeing switches on dog collars. Subsequently, DFW and FGC staff have explained that both the nature of dog hunting and the use of the contemplated dog-collar technology would not have a significant effect on the environment. Based on this, DFW provided a draft notice of exemption and accompanying explanation of the rationale supporting the reliance on the identified exemption (Exhibit 6.6).

At its Apr 26, 2017 meeting, FGC determined that the changes to Section 265 were exempt from CEQA pursuant to the guidelines in Public Resources Code Section 15061(b)(3), and adopted the changes to Section 265 prohibiting the use of GPS and treeing switches on dog collars for dogs used in the pursuit/take of mammals, with an effective date of April 26, 2018. Also at the meeting, FGC authorized publication of a notice of its intent to amend Section 265 to delete the prohibitions related to GPS and treeing switches for dog collars.

Today's adoption hearing is on the proposed changes to Section 265 as described in the initial statement of reasons (ISOR; Exhibit 1), to allow GPS and treeing switches on dog collars for dogs used in the pursuit/take of mammals.

Significant Public Comments

The majority of comments received discuss the merits of the use of dogs while hunting, and a fundamental opposition to hunting in general, but neglect to provide direct rationale regarding the use of GPS or treeing switches on dog collars. Exhibits 3-5 include some of the same

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comments found in the two previous rulemaking packages; however, the examples provide more comprehensive arguments. The commenters do not concur with the proposed notice of exemption, suggest that GPS and treeing switches be handled differently given their different purposes, and/or believe that collars with GPS or treeing switches will increase poaching, increase the number of hounds and hound hunters in the field, or even result in “deer drives”.

Several public comments suggest a possibility that the project (allowing dog collars with GPS or treeing switches) will cause a significant environmental impact; those comments seem to rely on the rationale that treeing switches will encourage illegal conduct because that could be the only use of such a device, or that the use of GPS collars will alter the way that hunters use dogs in the field. However, as Exhibit 6.6 explains, using treeing switches would allow lawful hunters to more quickly detect when a dog has treed a non-target species and allow for quicker retrieval. Additionally, GPS collars are utilized by hunters in substantially the same way as radio telemetry collars, which have long been used by hunters with dogs in the field. The time period in which hunting occurred when the April 2016 amendments to Section 265 allowed GPS collars and treeing switches did not indicate any significant increase in hunting activity or change in hunting behavior.

The record as a whole provides substantial evidence supporting the decision that there is no possibility of a significant effect on the environment if the regulation were adopted. Public comments suggesting otherwise are based on assumptions not supported by the record.

On Nov 22, 2017, approximately 700 comments were received via email stating general opposition to repealing the current ban on GPS collars and treeing switches, as well as general opposition to hunting.

Recommendation

FGC staff: Adopt the proposed changes as recommended by DFW.

Exhibits

1. [DFW memo received Apr 5, 2017](#)
2. [ISOR](#)
3. [Email from Randall Cleveland, received Nov 22, 2017](#)
4. [Email from Public Interest Coalition, Sierra Club Placer Group and Humane Society of the Sierra Foothills, received Nov 22, 2017](#)
5. [Email from Crocket & Associates on behalf of Animal Legal Defense Fund, received Nov 22, 2017](#)
6. [DFW memo and draft notice of exemption, received Nov 27, 2017](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission has determined, based on the record, this project is exempt from the California Environmental Quality Act pursuant to the guidelines in Public Resources Code Section 15061(b)(3), and adopts changes to Section 265 related to the use of dogs for pursuit/take of mammals or for dog training.

State of California
Department of Fish and Wildlife

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2017 APR -5 PM 4:42

Memorandum

Date: March 27, 2017

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the April 15 Fish and Game Commission Teleconference Meeting Re: Proposed Changes to Regulations Concerning the Use of Dogs for the Pursuit and Take of Mammals (Section 265, Title 14, CCR)**

Attached is a briefing paper developed as an informational item for Fish and Game Commission (FGC) use during the public discussion regarding the use of GPS collars or dog collars equipped with "treeing switches" for the pursuit and take of mammals.

The FGC adopted a regulation change proposal eliminating the prohibition on the use of these types of dog collars for pursuing/taking mammals submitted by the Department at their April, 2016 meeting in Santa Rosa. CEQA issues raised following that decision led to the development of this briefing paper. It is intended to provide additional information to assist the FGC in making a decision to either reinstate the ban on this equipment or uphold the previous decision. This document is not intended to be a substitute for an environmental document; it is just additional information to inform the discussion on this topic.

If you have any questions or need additional information, please contact T.O. Smith at [Timothy\(TO\).Smith@wildlife.ca.gov](mailto:Timothy(TO).Smith@wildlife.ca.gov) or (916) 445-3555. The Department's point of contact for this rulemaking is Craig Stowers, Environmental Program Manager at (916) 445-3553 or by email at Craig.Stowers@wildlife.ca.gov.

Attachment

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

David Bess, Chief
Law Enforcement Division
David.Bess@wildlife.ca.gov

Wendy Bogdan, Chief Counsel
Office of the General Counsel
Wendy.Bogdan@wildlife.ca.gov

Valerie Termini, Executive Director
Fish and Game Commission
March 27, 2017
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T.O. Smith, Chief
Wildlife Branch
[Timothy\(TO\).Smith@Wildlife.ca.gov](mailto:Timothy(TO).Smith@Wildlife.ca.gov)

Craig Stowers,
Game Program Manager
Wildlife Branch
Craig.Stowers@wildlife.ca.gov

Craig Martz, Program Manager
Regulations Unit
Wildlife and Fisheries Division
Craig.Martz@wildlife.ca.gov

I. Introduction

A. Background on the regulation

The prohibition on the use of treeing (or activity) switches and Global Positioning System (GPS) collars on dogs for the pursuit of mammals was implemented in July, 1994. (§265(d), Title 14, California Code of Regulations).¹ Treeing switches and GPS collars had been primarily used by hunters pursuing species which typically “tree” such as bear, mountain lion, and bobcat. Proponents of the prohibition argued that the use of these collars on dogs pursuing mammals (primarily bears) violated the ethical concept of “fair-chase” by making it easier for hunters to find the animals they were pursuing.

As a result of discussions and recommendations made by the Fish and Game Commission’s (Commission) Wildlife Resources Committee (WRC) in 2015, the Commission proposed to eliminate §265(d) to simplify and make more understandable the regulations in question. Regulatory changes since 1994 – including the legislative ban on hunting mountain lions in the early 1990’s (§4800, FGC) and the more recent prohibition regarding the use of dogs to take bear, bobcat, elk, bighorn sheep and antelope (§265 (a)(2), T14, CCR) – appeared to have rendered the prohibitions contained in §265(d) largely unnecessary, therefore §265(d) was proposed for deletion.

With this deletion, dogs could only be used to pursue deer (one dog per hunter during the general season only) and wild pigs (no more than three dogs per hunter). Treeing switches are not used in the pursuit of these species because they are not treed. The use of GPS collars on dogs pursuing deer and/or pigs would allow the hunter to find and locate crippled game more efficiently, would allow the hunter to locate lost dogs, and would allow enforcement to track hunter trespass in a manner not available to them now (by using data from the dog’s GPS collar as evidence during hunter trespass investigations). These rationales were used to support the lifting of the ban.

The lifting of the ban has resulted in significant debate before the Commission. This briefing paper has been prepared to provide a brief general summary of the issues raised in that discussion about whether to allow or disallow the use of GPS collars for take of deer during the general deer season and wild pigs. The information contained herein may be supplemented or changed if additional information is developed or identified.

¹ Former section 265(d) stated: Prohibition on Treeing Switches and Use of Global Positioning System Equipment.

(1) Treeing Switches. Electronic dog retrieval collars containing functioning treeing switches (devices consisting of a switch mechanism that results in a change in the transmitted signals when the dog raises its head to a treed animal) are prohibited on dogs used for the pursuit/take of mammals.

(2) Global Positioning System Equipment. Electronic dog retrieval collars employing the use of global positioning system equipment (devices that utilize satellite transmissions) are prohibited on dogs used for the pursuit/take of mammals.

This paper is not intended to be a substitute for document prepared pursuant to the California Environmental Quality Act (CEQA); the Commission will fully comply with CEQA at the time it makes a final decision. Neither is it being used in support of a CEQA “approval”. An “approval” is a “decision by a public agency which commits the agency to a definite course of action.” CEQA Guideline section 15352. The Commission is not at that stage yet in its process to consider the regulation regarding GPS collars and treeing switches.

B. Procedural posture

On September 9, 2015, the WRC discussed eliminating the GPS collar and treeing switch prohibition. The WRC recommended this change to the full Commission. In November, 2015, CDFW prepared for the Commission’s consideration, a regulatory repeal of sections 265(d) (1) relating to treeing switches and (d) (2) relating to GPS collars. After hearings in both December, 2015, and February, 2016, the Commission approved the proposed repeal at its April 14, 2016 meeting. The regulation was approved by the Office of Administrative Law and became effective on July 27, 2016.

On May 16, 2016, however, the Public Interest Coalition (PIC) filed a petition in Superior Court in Sacramento County (Case No. 34-2016-80002350) seeking a Writ of Mandate invalidating FGC’s action. That petition alleges that FGC failed to comply with the procedural requirements of CEQA at the time it lifted the ban. As part of that case, the Commission entered into a stipulation with PIC that states:

(T)he Commission intends to notice consideration of further amendment to section 265 and to conduct further CEQA analysis; and...the Commission’s decision following further CEQA analysis could have a substantial impact on this litigation....(The) Commission will make a final decision on any noticed amendment to Section 265 not later than its regularly scheduled meeting in June, 21-22, 2017. (Stipulation and Order to Stay Proceedings, p. 2)

To accomplish the elements of the stipulation, the Commission went to notice at its October, 2016, meeting to consider reinstituting the prohibition on GPS collars and treeing switches. Discussion on this topic has taken place at the Commission’s December, 2016, and February, 2017, meetings. CDFW is asking for the Commission to provide some direction (not a decision) to it so it can assist the Commission with its compliance with the CEQA at the time it makes a final decision on possible new regulations.

II. Discussion

A. What are GPS collars?

GPS dog collars contain a transmitter that triangulates signals from a minimum of 3 satellites in order to provide an exact location to a receiver used by the hunter/dog handler. The receiver can identify individual way-points (individual locations the dog has been) as well as the track (a series of waypoints) of the dog through the environment in which it is hunting/tracking. GPS collars are usually more expensive than other types of collars. Collars typically used for hunting purposes range from \$179 (Smart Waterproof GPS Collar Tracker for Pets) to \$450 (Garmin Astro 320/T5 Bundle). Although more expensive, hunters purchase and use them as a “security system” to protect their dogs, both seen as valuable property and hunting companions.

Prior to GPS technology, many dog handlers used radio-telemetry collars to track their dogs. Radio-telemetry collars send a VHF signal to the dog handler’s receiver unit. Using a directional antenna (Yagi), the operator can determine the direction of the collar based on the strength of the signal as the antenna is moved. Fast, loud beeps indicate the handler is getting close to the dog. Radio-telemetry collars are fairly inexpensive, ranging from \$80 (Sportdog Beeper Dog Collar 400) to \$169 (Sportdog Hound Tracking Collar). The use of radio-telemetry dog collars for the pursuit/take of deer and wild pigs is currently legal and will remain so under any scenario currently considered in connection with the proposed change.

B. What are treeing switches?

A “treeing” or “activity” switch² is a device on a dog collar which sends different strength signals to a receiver depending upon the position of the dog’s head (a slow signal is sent when the dog’s head is down, a faster signal is sent when the dog’s head is raised indicating an animal has been “treed”). The hunter can use this signal to locate the dog, and presumably the treed animal, in much the same way as a GPS collar only without the precision a GPS collar provides. Without an electronic treeing switch, a hunter who is pursuing game must listen for hounds beginning to howl (referred to as baying) at a treed animal and follow the sound of the baying.

C. What is “fair-chase”?

“Fair Chase”³ is the ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wild, native North American big game animal in a manner that does not give the hunter an improper advantage over such animals. Fundamental to all hunting is the concept of conservation of natural resources. Hunting in today’s

² Definition located at wildlifematerials.com

³ Boone and Crockett Club, boone-crockett.org

world involves the regulated harvest of individual animals in a manner that conserves, protects, and perpetuates the hunted population. The hunter engages in a one-to-one relationship with the quarry and his or her hunting should be guided by a hierarchy of ethics related to hunting, which includes the following tenets:

1. Obey all applicable laws and regulations.
2. Respect the customs of the locale where the hunting occurs.
3. Exercise a personal code of behavior that reflects favorably on your abilities and sensibilities as a hunter.
4. Attain and maintain the skills necessary to make the kill as certain and quick as possible.
5. Behave in a way that will bring no dishonor to the hunter, the hunted, or the environment.
6. Recognize that these tenets are intended to enhance the hunter's experience of the relationship between predator and prey, which is one of the most fundamental relationships of humans and their environment.

Therefore, if an aspect of hunting is perceived as giving a hunter an unfair advantage over the target species, then it is said to violate the ethical concept of “fair chase”. Any hunter who wishes to enter an animal in the Boone & Crockett and/or Pope & Young (animals taken by archery equipment) record books must first certify in writing that the animal was taken under the principles of fair chase. These principles have been adopted by hunting and wildlife conservation organizations such as the Rocky Mountain Elk Foundation, Mule Deer Foundation, California Deer Association, and the Wild Sheep Foundation.

1. How do collars/switches promote “fair-chase”?

Since the Fish and Game Commission banned the use of dogs for pursuing big-game species except for deer (during the general season only) and wild pigs, dogs fitted with GPS collars would be used primarily to find wounded animals. In the event of hunter-injured wildlife, dogs help locate the injured deer or pig thereby preventing the animal from going to waste. Avoiding waste is a component of hunting ethics and is prohibited under California law (§4304 Fish and Game Code). All hunters are expected to go to the fullest extent reasonable to recover any wounded game animal and a dog can be effective in this effort. Proponents for the use of this equipment advocate that the humane treatment of hunting dogs is they are not left in the field in the event they become lost. Dogs that have become separated from the hunter would be more easily found. The treeing switch regulation was not proposed for change because it promoted fair chase, but because it has become obsolete since neither deer nor pigs can be treed and the pursuit of those species that do climb trees has been otherwise legislatively prohibited.

2. How do collars/switches hinder “fair-chase”?

These devices could make it easier for hunters to locate animals to kill. Since dogs can track wildlife faster than humans, opponents of the devices claim the hunter has an unfair advantage when using GPS-collared dogs because dogs can keep up with the animal being pursued, and the hunter can follow along using the GPS markers at a slower pace to catch up with the hunted animal. Opponents of the use of these collars have also asserted hunters could stay in their campgrounds and release their GPS-collared dogs, only to catch up with them later when the dogs have located a target species. Opponents argue the same could be true for treeing switches.

It is unlikely and highly unusual for hunters to use these collars in the manner suggested by the opponents of the change due to an increased probability of losing their dogs. Opponents argue it is possible some poachers may use these collars to take species for which the use of dogs is entirely prohibited by existing law or regulation.

D. Other effects on hunting

1. Number of hunters

Over the period 2012-2016, California issued an average of 183,294 first and second deer tag applications per year⁴. After deducting the number of second deer tags sold, the Department estimates that there were approximately 103,402 individual deer hunters during that same time period. Unfortunately, it is impossible at this time to provide information regarding the use of dogs to take deer as that question is not asked of hunters reporting take. Using dogs to hunt deer is primarily an eastern method of hunting white-tailed deer and is not a common practice in California⁴. However, as more people relocate to California they are bringing their traditions with them and some deer hunters are currently using dogs to hunt deer.

Because the Department does not track the number of hunters using dogs to hunt deer, it cannot conclude that there is any impact on the number of hunters from either permitting or prohibiting GPS collars or treeing switches.

An average of 54,775 pig tags were sold from 2012-2016⁵. Assuming approximately 17-20% of successful pig hunters used dogs⁴, from 9,312 to 10,955 of these hunters used dogs to assist in the take of wild pigs. Private landowners are now able to kill depredating pigs under the “immediate

⁴ California Department of Fish and Game. 2004. Final Environmental Document for Wild Pig Hunting. 133pp.

⁵ California Department of Fish and Wildlife. 2017. License Sales Statistics. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59821&inline>.

encounter” provision of the pig depredation regulation, and this has had a negative impact on the sales of pig tags. The trend is downward; in 2012 60,349 pig tags were sold but in 2016 only 40,361 pig tags were sold. This downward trend is expected to continue as more private landowners deal with the problem themselves and pig populations decline due to other population reduction efforts.

2. Hunter success

Estimated hunter success for deer hunters in 2014 was 21.6% (more accurate figures will be available for the 2016 season with the implementation of mandatory reporting for all deer hunters whether successful or not). Hunter success data for wild pig hunters is not tracked; mandatory reporting for wild pig hunters has not been implemented to date.

The use of dogs for deer hunting was evaluated in the 2004 Final Environmental Document Regarding Deer Hunting⁶. Studies conducted in 1986⁷ on white-tailed deer suggest hunters with dogs have a higher success rate than hunters without dogs. This study also indicates that in areas where hunters use dogs, deer experience more stress, but that no significant effects on fertilization, reproductive, and survival rates were found. The study concluded the use of dogs for hunting deer does not impact the reproductive potential of deer populations.

The use of dogs for wild pig hunting was evaluated in the 2004 Final Environmental Document for Wild Pig Hunting. This document determined the regulated use of dogs to hunt wild pigs (approximately 17-20% of wild pig hunters reported using dogs to hunt wild pigs) has not resulted in significant negative impacts on wild pigs, other wildlife, or their habitats in the past. However, public comments generated by the Draft Environmental Document for Wild Pig Hunting indicated some individuals are philosophically opposed to hunting pigs with dogs. They claimed it caused needless pain and suffering because the dog pursued the animal until it was caught and killed. It is important to remember the dogs are used to find and hold the pigs until the hunters kill them, not the dogs. This same document concludes hunters using dogs to hunt pigs have a higher success rate and lower wounding losses than hunters not using dogs.

Both Final Environmental Documents indicate an increase in hunter success may be expected when using dogs to locate downed or crippled game. If GPS-collared dogs are used to find target species, then it will likely increase hunter success. This hunter success is likely to be marginal because most

⁶ California Department of Fish and Game. 2004. *Final Environmental Document Regarding Deer Hunting*. 351 pp.

⁷ Spencer, G. 1986. *Hunting Deer with Dogs*. Special Staff Report, Wildlife Division, Texas Parks and Wildlife Department. 71 pp.

hunters who would use GPS collars are likely now using radio-telemetry collars on their dogs.

Again, because wounded animals can be located more easily with collared dogs, there is likely to be less waste of hunter shot deer and wild pigs.

3. Use of dogs generally

a. Hunting

In California dogs are now primarily used in hunting upland game and waterfowl species. Historically dogs were used to track and tree bears, bobcats, and mountain lions but other legislative and regulatory changes now prohibit the use of dogs for these species. Although dogs may still be used while hunting deer and pigs, the Department does not currently track that information. Deer hunters may use one dog while deer hunting during the general season; these dogs are most commonly used to work dense cover hunters can't access in order to flush deer and/or to trail wounded deer or find carcasses in heavily vegetated areas. Pig hunters are allowed to use up to three dogs; these dogs are used to locate pigs in dense cover and to hold them in the vicinity while a hunter approaches. While dog owners are expected to keep their dogs under control at all times the use of a leash for hunting purposes is not required in California.

b. Training

Dogs can roughly be categorized as follows: 1) retrievers are primarily used for waterfowl hunting; 2) flushing dogs which are primarily used on upland game species to find, flush, and retrieve game; 3) pointers which are almost exclusively used to find upland game species; 4) trackers/trailers which are primarily hounds which find, trail, and bring to bay the target animal.

With regard to the fourth category of dogs described above (trackers/trailers) California has identified four (4) "dog training zones" (§265(a) (4)(A-D)) and dog training seasons have been established in order to allow hunters to train their dogs without impacting other wildlife species during their normal reproductive/off-spring rearing seasons. These "no training" seasons typically run from April 1st to the opening day of general deer season in those areas.

GPS collars can assist during training periods when inexperienced dogs are more likely to get lost. If a dog is being trained, being able to locate it quickly is extremely important so the untrained dog doesn't harm the target individual. Its owner can track it down and call it off more quickly and more accurately with GPS.

c. Should the FGC consider welfare of dogs in hunting regulations?

Commenters in opposition to the lifting of the prohibition on GPS collars and treeing switches argue the welfare of hunting dogs is the responsibility of the dog owner/ handler, not the responsibility of the Commission. Presumably this suggests the welfare of lost dogs should not be a consideration in the Commission's regulation.

In this regard, the Commission's jurisdiction as to game mammals is contained in Fish and Game Code section 203. It provides any regulation of the Commission may do "any or all of the following as to any or all species or subspecies: ...prescribe the manner and the means of taking." And "take" pursuant to Fish and Game Code section 86 means "...hunt, pursue, catch, capture or kill" or attempt to do any of these things. Further, section 203.1 specifies that when adopting regulations pursuant to section 203, the Commission "shall consider...the welfare of individual animals...." It is not specified if this reference to individual animals includes only the target species being regulated or other animals that are used as a manner and means of the taking like hunting dogs.

d. Use of leashes

While dogs are required to be under control at all times while in the field, California law does not currently require dogs to be leashed while actively hunting. As dogs are commonly used to access terrain and/or vegetation is challenging if not impossible for the hunter to access, the use of a leash under those circumstances would be difficult. That said, for example, the State of Montana only allows dogs to be used to track wounded big-game species and the dog must be on a leash no longer than 50 feet while doing so.

4. Non-target species impacts

As the use of radio-telemetry collars is currently authorized for training and hunting purposes, impacts to non-target species from authorizing the use of GPS collars will not increase. Neither of the two previously identified Environmental Documents identified any significant impacts to non-target species through the use of dogs.

Dogs are typically trained to locate specific species of animals in order to maximize the hunter's opportunity to be successful for whatever they are hunting. For example, pointing dogs for upland game birds receive training to prevent them from locating and chasing after non-target species such as deer. Since not all dogs are trained to the same standards, it is likely that minimal impacts to non-target species will occur (as may happen under the current regulation). However, ethical hunters spend countless hours and

significant sums of money to have their dogs trained to locate certain species of wildlife primarily to maximize their opportunity and to minimize impacts to non-target species.

5. Use of technology in hunting

There is no doubt advances in technology have made some hunters more efficient. Technological advances in firearms, optics, ammunition, protective clothing and other gear occur every year to the benefit of the hunter. Dogs have been used to find game since humans started hunting, but collars have not. The proposed regulation relates to one type of collar used in hunting (radio-telemetry) versus another (GPS). Each time new technology emerges, the Commission works with the Department to determine if its use is appropriate. GPS technology provides the hunter with additional options regarding hunting locations, and it has also served to bring many people home from areas they may not be familiar with. The use of these collars is not expected to result in more efficient hunters but rather more dogs that return home.

E. Other states' regulations

Twenty-four states (largely Eastern and Southern states) have enacted regulations requiring a hunter to be specifically licensed for tracking and for dogs to be leashed while doing so. Several Eastern states have implemented a certification program for using dogs to trail wounded game (dogs are not allowed to pursue big-game species only trail them in these states). In these states, hunters are required to contact "certified trackers" in the event they wound and can't locate an animal. A list of certified trackers by area is maintained by the state, and hunters are responsible for contacting and paying the tracker to find the hunter's wounded animal. Some states (Oregon for example) do not allow the use of dogs for hunting most game mammals.

F. Enforcement considerations

Use of GPS collars could benefit California's wildlife officers who are conducting poaching or hunter trespass-related investigations. Wildlife officers could potentially use GPS collar data to prove where a dog has been and to find poaching-related crime scenes whether in semi-urban private properties or extremely remote areas. GPS collar data has proven to be excellent evidence the court can evaluate during legal proceedings. Radio telemetry collars do not provide this type of evidence.

The adoption or denial of this regulation is not expected to have any measureable economic impact. GPS collars are already authorized for use while hunting for other species (for example upland game and waterfowl), and the number of hunters who would use them while hunting game mammals is expected to be minimal.

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 265
Title 14, California Code of Regulations (CCR)
Re: Use of Dogs for Pursuit/Take of Mammals or for Dog Training

- I. Date of Initial Statement of Reasons: August 8, 2017
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: April 26, 2017
Location: Van Nuys, CA
 - b) Discussion Hearings: Date: October 11, 2017
Location: Atascadero, CA
 - (c) Adoption Hearing: Date: December 6, 2017
Location: San Diego, 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:
- Subsection 265(d)(1): Delete the provision prohibiting the use of treeing switches.
- The provision is no longer necessary and the amendment will eliminate the prohibition. This type of equipment might only be used when pursuing an animal that can climb, such as bear or bobcat. However, recent changes in legislation have greatly restricted the use of dogs and the pursuit of bear and bobcat with dogs is prohibited. The use of dogs is now limited to only wild pigs and deer, rendering the current prohibition on the use of treeing switches unnecessary.
- Subsection 265(d)(2): Delete the provision prohibiting the use global positioning system (GPS) equipped dog collars.
- Based on input from hunters, the use of GPS equipped collars on hunting dogs would provide multiple benefits. A prohibition on the use of GPS equipment increases the possibility that downed game (wild pigs and deer) may be lost to the hunter creating waste. GPS equipped collars would also aid in the retrieval of lost dogs. Because of the value in allowing GPS equipped dog collars, the Commission feels it is appropriate to eliminate the prohibition by deleting that regulatory language.

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

Authority: Sections 200, 203, 3960, 3960.2 and 3960.4, Fish and Game Code.

Reference: Sections 3960, 3960.2, and 3960.4, 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:

At the Fish and Game Commission's Wildlife Resources Committee (WRC) meeting held on September 9, 2015 in Fresno, California. The members of the WRC discussed the proposed changes to the regulation and concurred with the Department's recommendations to remove the prohibitions.

This regulation change proposal was originally adopted by the Fish and Game Commission at their April 14, 2016 meeting in Santa Rosa (noticed at their December 10, 2015 meeting in San Diego, discussed at their February 11, 2016 meeting in Sacramento). Following that action, the Fish and Game Commission's decision was challenged through litigation regarding CEQA. Opponents of the regulation change proposal claimed the CEQA analysis to support the change was deficient. In response to that claim, the Fish and Game Commission took action to rescind the adoption (Notice hearing Oct 19-20, 2016, Eureka; Discussion hearing Dec 7-8, 2016, San Diego; Originally scheduled adoption hearing Feb 8-9, 2017, Rohnert Park; Further discussion March 15, 2017, Teleconference; Further discussion April 13, 2017, Teleconference; Adoption hearing April 26-27, 2017, Van Nuys) and return the regulation to its original state.

At each of the Commission meetings mentioned above, including the WRC meeting, the Commission received input from the public on this proposed regulatory action. Additionally, multiple comment letters on the Commission action to rescind the prior adoption addressed the current proposed regulatory action.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative was considered and rejected because it would not eliminate the unnecessary regulation concerning the use of treeing switches. The no change alternative would also continue the regulation prohibiting the use of GPS equipped collars and therefore continue the problem of hunters unable to retrieve wounded game (wanton waste) or locating lost dogs.

(c) 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 not have a significant 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. Removing outdated prohibitions on treeing switches and GPS collars is not anticipated to affect current levels of hunting effort for species that can legally be pursued with dogs.

(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 benefits to the health and welfare of California residents. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future

stewards of the State's resources. The Commission anticipates benefits to the State's environment in the sustainable management of natural resources.

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

(c) Cost Impacts on Representative Private Persons/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) Other 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:

None.

(h) Effect on Housing Costs:

None.

VII. Economic Impact Assessment

The proposed action will have no statewide economic or fiscal impact because the proposed action modifies the regulation regarding the use of electronic dog collars while hunting only for deer and wild pigs. The regulation eliminates unnecessary language prohibiting the use of treeing switches; and, permits GPS equipped collars, increasing the hunter's ability to find and retrieve downed wild pigs and deer as well as lost dogs. There are no costs to businesses or persons.

(a) Effects of the regulation on the creation or elimination of jobs within the State:

The regulation will not affect the creation or elimination of jobs because it is unlikely to cause an increase or decrease in hunting effort.

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

The regulation will not create new businesses or eliminate businesses within the State because it is unlikely to cause an increase or decrease in hunting effort or in the manufacture and sale of GPS collars.

- (c) Effects of the regulation on the expansion of businesses currently doing business within the State:

The regulation will not affect the expansion of businesses currently doing business in the State because it is unlikely to cause an increase or decrease in hunting effort.

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

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.

- (e) Benefits of the regulation to worker safety.

The proposed regulation will not affect worker safety.

- (f) Benefits of the regulation to the State's environment:

It is the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the State. The Commission anticipates benefits to the State's environment in the sustainable management of natural resources.

INFORMATIVE DIGEST

(Policy Statement Overview)

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

Benefits of the regulations

The regulation eliminates unnecessary language regarding the prohibition on the use of treeing switches; and, permits GPS equipped collars increasing the hunter's ability to find and retrieve downed wild pigs and deer as well as lost dogs.

Consistency with State or Federal Regulations

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200 and 203, has the sole authority to regulate hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to the use of dogs for hunting mammals to be consistent with the provisions of Title 14. Therefore, the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

REGULATORY TEXT

Section 265, Title 14, CCR is amended to read:

§265. Use of Dogs for Pursuit/Take of Mammals or for Dog Training.

... [No changes to subsections (a) through (c)]

~~(d) Prohibition on Treeing Switches and Use of Global Positioning System Equipment.~~

~~(1) Treeing Switches. Electronic dog retrieval collars containing functioning treeing switches (devices consisting of a switch mechanism that results in a change in the transmitted signals when the dog raises its head to a treed animal) are prohibited on dogs used for the pursuit/take of mammals.~~

~~(2) Global Positioning System Equipment. Electronic dog retrieval collars employing the use of global positioning system equipment (devices that utilize satellite transmissions) are prohibited on dogs used for the pursuit/take of mammals.~~

Note:-Authority cited: Sections 200, 203, 3960, 3960.2 and 3960.4, Fish and Game Code. Reference: Sections 3960, 3960.2, and 3960.4, Fish and Game Code.



P E A C E
P R O T E C T I N G E A R T H & A N I M A L S W I T H C O M P A S S I O N & E D U C A T I O N

P.O. Box 846 • Newcastle, CA 95658 • pea-ce@live.com

November 22, 2017

CA Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

Subject: BAN GPS Collars for Hound-Mammal Hunting and Training
"Use of Dogs for Pursuit/Take of Mammals or for Dog Training"

This ill-advised, previously-approved, then rescinded, and now back again regulation, resulted and continues from an irresponsible lack of vetting and consequences of allowing self-interests to unduly influence the FGC. Alarms should have gone off to stop this electronic recreation killing madness when the proposal was suggested for illegitimate reasons.

The ISOR is so filled with inaccuracies and misleading statements that we may confer with others and submit additional comments. For example: "Because of the value of in allowing GPS equipped dog collars, the Commission feels it is appropriate to eliminate the prohibition by deleting that regulatory language. Automatic rifles and pistols would also provide "value" to hunters, but no one is suggesting that regulatory amendment. Allowing GPS collars on hounds to hunt mammals is just as absurd. Radio Telemetry in the right hands is more than sufficient. GPS collars reward incompetence in hound hunting. Thus the attempt to justify the amendment fails with any logic or validity.

The public expected and deserved an Environmental Impact Report (EIR) or DED. Oral statements and published documents by the FGC and the CDFW assured the public that the Calif Environmental Quality Act (CEQA) and its mandate that the public be informed, would be followed. Such assurances were reinforced by:

Staff Summary (SS) for Feb 8-9, 2017, states: "The current rulemaking and related CEQA analysis will help to further inform FGC about the issues.... Staff is developing an analysis of the impacts.... FGC will be able to rely on this analysis...." The SS goes on to state, "DFW staff is developing an analysis of the impacts of both allowing GPS collars and treeing switches and prohibiting the use of that gear;...." Other than a DFW memo, report, briefing document to FCG, which was a far cry from an "analysis," that even FGC Counsel stated was not an environmental document, there have been no studies, no analysis of what impacts the proposed reg amendment would create which the public was told to expect.

At the Feb 8, 2017 meeting, President Sklar, in justifying the 12-month delayed implementation of the GPS ban bring-back, states the reason is to "allow us to then do the environmental work to consider whether we want to reinstate the use of GPS collars as the commission did last year." He further states his and the FGC's intention to "get it right." At the April 26, 2017 meeting, after the ban was reinstated, and then noticed to be lifted again, it was stated again that they, the commissioners, would look forward to the analysis. These words and actions had the public believing that everything was on the "up and up," which was not the case at all.

GPS collars are used by hunters who refuse to keep control of their dogs (violation of § 3008 as well as other state codes that require dogs to be leashed at all times). GPS is the dog doing the "hunting," not the human hunter. With GPS collars the humans don't have to follow the dogs with radio telemetry. They can release the dogs, let them run for miles, see when they stop, and then go investigate. Depending upon terrain, roads, or underbrush, it may take hours to reach dogs that have ranged. This is one of the impacts that GPS collars creates, and it's one of the primary reasons why it's banned in other states.

The disconnect with this proposal is with the stated purpose of allowing GPS to retrieve dogs—to not "lose" them. But one member of the public who spoke said he's on oxygen 24/7, (April 14, 2016, Santa Rosa, 5:14 into the video), and wants GPS collars because it would "make it easier on him." What are we thinking? A disability cannot be accommodated at the expense of wildlife and increased poaching, and at the expense of the dogs. It's very obvious that this so-called traditional hounder does not and cannot keep up with his dogs—so he lets them go to range as they will. This becomes very similar to illegal "coursing," setting dogs upon other animals.

Another hounder spoke who wants GPS collars because as he stated publicly (April 14, 2016, Santa Rosa, 5:12 into the video) that critters run far nowadays, and he "can't keep up with them like I used to when I was younger." The FGC apparently is going to condone activities of hounders who admittedly cannot keep up with their dogs. That means they cannot intervene immediately get to their dogs in an altercation with any type of wildlife or domestic animal, including listed species, illegal-to-hound-hunt species (mountain lion, bear, or bobcats), or killing of bedded-down fawns. What further compelling evidence is needed to prove that GPS collars will create many impacts via allowing more dogs to be released in the wild with all the negative impacts as evidenced hounders' testimony? Hounder testimony proves that they will be more likely to hound hunt with GPS, and that will increase negative impacts on wildlife.

The analysis must also cover how untrained dogs will be released more often with GPS and will cause much more havoc or serious injury or death to targeted and untargeted wildlife or domestic pets. An analysis should point out alternatives, that apparently hunters do not know of: or follow reasonable options for dog retrieval: only release solidly trained dogs, keep dogs under control and within range (aka "keep up with them in the field") or simply tether them which is required in other states, micro-chip and tattoo all hounds, use collars with owner information so that the number of "abandoned" hounds that are taken to public animal shelters can have their owners contacted.

To further address the whims of hounders, no hounder should be able to use dogs unless he/she is completes requirements to qualify as a certified handler. Just as any hunter must have a hunting license, if the hounders are going to use hounds to do their hunting, then they must qualify via training and passing a test. Also, all dogs used in hunting must be certified as being solid in specific commands (recall via voice, whistle, scent trained to prevent cross-scenting).

The FGC must prepare an environmental analysis and address impact from increased hound hunting activities (hounder testimony and common sense). It must also analyze how GPS collared hound hunting increases will impact social structure of wildlife "families," migration, public safety as more packs of dogs are running loose in public areas, impacts on the public's right to recreate (loose dogs will be a hindrance), impacts on wolf distributions due to wolves being in part or much of the north-eastern dog hunting zones. Releasing dogs to run miles with GPS collars is not proper control nor care of dogs when releasing them in wolf, mountain lion, bear, or coyote areas. Two map images from CDFW websites (Gray Wolf activity on Left as of October 2017,¹ and allowed hound hunting area from CDFW's Mammal Hunting

¹ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=150501&inline>

Regulations on the right² clearly indicate that hound hunting will be allowed in or near areas of known-wolf activity. This is irresponsible to both the endangered wolves and to the dogs that are released.

Approximate Area of Gray Wolf Activity, October 2017



Anyone who releases their dogs in an area where an Endangered Species is known to be and can result in deadly confrontations, should be required to keep their hounds tethered or stay right with them.

As we've stated in previous comments, GPS collared hounds are often released while the owner/handlers follow the coordinates from inside their trucks. This is not ethical hunting by any stretch of the imagination, but it reinforces how little care is given to these dogs. Just as important, hound welfare is not the purview of the FGC—only wildlife welfare should be. Yes, the ISOR stretches another point by stating the regulations include "animal" in terms of welfare. That does not refer to all "animal" species in California—it pertains to wildlife..."Fish and Game" is the focus—not our pets or livestock, etc. At what point do Fish and Game regulations truly move into animal welfare that includes domestic animals? The FGC stepped outside of its regulatory authority with that reasoning. It does not have authority to make regulations for domestic animals.


We urge a firm "NO" vote to ban hound hunting with GPS collars.

For the PEACE team,

Randall Cleveland

Randall Cleveland

² California MAMMAL Hunting Regulations, 2016-2017, CDFW, page 25

PUBLIC INTEREST COALITION	 SIERRA CLUB FOUNDED 1892	Humane Society of the Sierra Foothills
P.O. Box 761	Placer Group	2945 Bell Rd, #175
Loomis, CA 95650	P.O. Box 7167, Auburn, CA 95604	Auburn, CA 95603

[sent via email: fgc@fgc.ca.gov]

November 22, 2017

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244

Ladies and Gentlemen:

RE: Dec 6, 2017, Agenda Item 6-Proposed Amdmt Sec 265-GPS Dog Collars

Our comments on the proposed regulation amendment to Section 265, to lift the ban on GPS collars and treeing switches (aka "tip switches") for pig and deer-hound hunting are presented with evidence to support a NO vote. The ISOR (October 11, 2017, Agenda Item 7) and the "Briefing Document" (or Memo or "Briefing Paper" or "Background Document" Dated March 27, 2017, in the April 26, 2017, Agenda, Item 13) are misleading and inaccurate. As shall be pointed out, the Fish and Game Commission (FGC) must not rely on either document in making their decision.

For almost two years, the FGC has been informed via public oral and written comments of the need to analyze the proposed GPS/treeing switches (GPS) collar amendment (GPS amendment) via a DED (as evidenced in online FGC meeting minutes/videos). In a number of instances at different meetings, the FGC repeatedly assured the public that a proper analysis would be conducted and indicated that they welcomed it. Apparently, in an abrupt turn around, either via miscommunication or being misinformed, the FGC has mistakenly interpreted the California Environmental Quality Act (CEQA) and now claims this proposed GPS amendment to be exempt from CEQA. We submit that a DED is required for the proposed GPS amendment for numerous reasons, including but not limited to substantial evidence presented which indicates considerable risks for significant environmental impacts should the GPS amendment be adopted. Furthermore, from its unwarranted and unjustified inception in 2015, at a WRC meeting, to its present iteration, the goal of the proposed GPS amendment is not an authorized regulatory activity of either the FGC or the CDFW which means it is inappropriate to use a regulatory standard upon which to base any exemption from CEQA.

The purpose of CEQA is to protect and maintain California's environmental quality, which includes wildlife. Using the functional equivalent of CEQA, the FGC's requirement is to inform the public and its responsible officials of environmental consequences of proposals and decisions via a Draft Environmental Document (DED). That CEQA requirement to prepare an analysis has not been vacated with this proposed GPS amendment process because GPS amendment is not exempt from CEQA for a number of reasons, including evidence of significant environmental impacts. A high court decision ruled that regardless of quasi-legislative regulatory mandates, CEQA

Guidelines must be followed when a proposal is clearly unauthorized or erroneous.¹ Furthermore, CEQA guidelines state that claiming a regulatory standard will not avoid consideration of substantial evidence showing that a significant environmental impact from a project exists.

I. The Proposed Regulation Change Is Not Exempt from CEQA

From the ISOR, Amend Section 265, August 8, 2017:

III. Description of Regulatory Action

(a) The stated reasons for deleting Subsection 265(d)(1), the prohibition of treeing switches, and 265(d)(2), the prohibition GPS equipped dog collars, contradicts the mandate of agencies that come under the CA Natural Resources Agency which in part is to protect the state's natural resources. Allowing GPS does not meet the standard requirement of Guidelines section 150064(h) that must meet all of five criteria.

The first one that is not met is (3)(A) "a quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order or other standard of general application." We submit that there is no statute that allows GPS and the unfair advantages it provides hunters, and that statutes that prohibits it are for environmental protection. Therefore, the proposed amendment must be deemed exempt from CEQA and required preparation of a DED. Moreover, throughout a number of FGC meetings for the past two years when this regulatory GPS amendment has been discussed, the FGC has stated numerous times that the required analysis would be forthcoming, that they looked forward to studying it, that they didn't fully "do our job on preparing for that vote in terms of CEQA," that they would "...reintroduce the idea of allowing dog collars and do a CEQA review," and in other instances of indications to the public that the GPS amendment was not exempt from CEQA.

The second reason that dropping the prohibition is not necessary as claimed or authorized and therefore exempt from CEQA is the statement that GPS collars would aid in the retrieval of lost dogs. Retrieving lost, domestic dogs is not a statute or the purview of the regulatory agency (FGC or CDFW). Not losing one's dogs is the sole responsibility of the dog owners; as such, it behooves houndsmen (hounders) to release only solid dogs and to keep up with them. Dogs that are well trained, under control (as required by FG Code §3003), micro-chipped, properly collared with contact info ID, and properly socialized with people, are not likely to be lost. If a dog owner truly cares about their dogs' well being, they do not recklessly release them to run wild, out of control, and then call on a regulatory agency to amend the FG Code to possibly create even more negative environmental impacts and wildlife disruption, including but not limited to mauling or killing both targeted and non-targeted species. There have been no studies to support how many dogs are retrieved, after being "lost" via GPS collars. Once hounds have ranged too many miles from their handlers so as to be considered "lost," just as any pet would be, they are vulnerable to other predators, lethal altercations, and serious injuries. Even with GPS collars, after dark in rough, rugged terrain, the hounders may have to call off retrieval searches due to impossible search conditions. Thus, the small benefit, if any, of GPS collars, especially in light of their negative impacts, does not warrant allowing their use.

Another unsupported aspect of allowing GPS for dog retrieval is the notion that dogs are "lost" on a regular basis. Retrieving a lost, beloved pet is certainly desirable, but

¹ Environmental Protection, supra, 43 Cal.App.4th at page 1022, 50 Cal.Rptr.2d 892; see Yamaha, supra, 19 Cal.4th at page 11, footnote 4, 78 Cal.Rptr.2d 1, 960 P.2d 1031.

the costs of poaching opportunities created must be factored into the decision to allow GPS, especially when responsible dog owners have many other options. Again, there are neither studies nor any information as to the frequency of lost dogs to use that argument in support of allowing GPS. On the other hand, there are many reports of “found” dogs that are turned into public Animal Service Shelters located in rural areas. An Animal Sheltering article suggests that “found” does not always indicate “lost.”

A lost hound that is turned in is easily reunited with its owner via micro-chipping and other responsible ownership steps mentioned in this document. However, many, if not most hounds are turned into shelters after hunting season due to apparent abandonment with no type of identification. Furthermore, according to the article they are rarely sterilized, or vaccinated, and due to being un-socialized can “tricky to adopt.”²

The second requirement that is not met for exemption is (3)(B) “adopted for the purpose of environmental protection.” With regard to treeing switches, the ISOR states that the “specific purpose for deleting treeing switches is because they are no longer necessary because, “This type of equipment might only be used when pursuing an animal that can climb, such as bear or bobcat.” However, the equipment might also be used to hound hunt non-game tree-climbing mammals that have seasons and/or zones. The ISOR goes on to erroneously state that “The use of dogs is now limited to only wild pigs and deer, rendering...treeing switches unnecessary.” Again, many non-game mammals climb trees—squirrels, raccoons, opossums, foxes, and others.

The ISOR continues with either erroneous or misleading statements as to the purpose for deletion of GPS collars which, again, do not meet (3)(B). “Based on input from hunters,” which, although unstated, reflected their self-serving interests, is not a valid reason to delete regulations, unless it is thoroughly vetted as to environmental protection mandates. One weak reason tossed into the mix is that without GPS the possibility of downed game may be lost to the hunter and create waste. For starters, in many instances, at the end of a hound chase or pursuit, with the targeted animal exhausted, cornered, or treed, hounds would have to be close by when the hounder catches up to that targeted animal. Depending upon the situation (some dogs may be attacking the spent animal), for their safety, the dogs would be leashed or otherwise restrained before the hunter shoots. If the shot is errant, and the wounded animal flees, it is up to any hunter, with or without dogs, to track the animal. At that point, if trained for blood tracking, hounds can and should follow the blood trail on leash or tether (as is required in other states, such as Montana and Texas).

When GPS is used in “deer drives” and the waiting hunters (“stands”) shoot when the exhausted deer emerge, again, the hounds would have to be close behind or emerging soon as well. If the shot is errant and the wounded animal tries to flee, hounds should be restrained, leashed or tethered, and only when fully under control of the hounder, they can then follow the blood trail to carcass recovery. As stated in the ISOR, GPS is not even “reasonably necessary” to avoid losing downed game and creating waste.

Also, a purpose of providing hunters with “multiple benefits” cannot be considered a statutory mandate meant for environmental protection. Non-hound hunters who use firearms and wound wildlife are able to track; they do not appear to have major problems with losing wounded wildlife and creating waste. Again, without citing reports

² Helping hounds, Animal Sheltering magazine, July/August 2012.

or preparing the required CEQA studies, the FGC and we, the public, are expected to rely on an erroneous assumption of need, from hunters with obvious conflicts of interest, in order to relax an important FG Code that protects wildlife and our natural resources.

The argument that GPS collars are necessary to decrease the possibility of lost down game (when the hounds can be leashed and follow the blood trail) is illogical and disingenuous. Furthermore, we submit that if a pack of GPS collared dogs are released to chase a now-wounded animal that has possibly just been chased for miles, it is more likely to be caught and killed via a cruel and vicious mauling of the dogs instead of the hounders who may be far behind—which also violates FG Code statutes.

Evidence that deleting the prohibition of GPS is not exempt from CEQA (due to regulatory standards and/or environmental protection concerns) includes the fact that training with GPS is a violation of a separate FG Code. Although the training forbids killing the wildlife, it is still is chased, harassed, and in the case of deer could be pursued for miles and die or be severely impacted from exertion myopathy.³ Harrassment of wildlife is illegal, but that is exactly what happens when hounds are released with GPS collars under the guise of “training.”

Further evidence that deleting the prohibition of GPS is not exempt from CEQA (due to regulatory standards and/or environmental protection concerns) includes (1) None of the FGC or CDFW’s previous attempts to drop the prohibitions in the past have succeeded due to environmental protection concerns;⁴ and (2) as recent as 2010, an attempt to drop the GPS prohibitions was studied via a DED because CEQA review was deemed necessary to conduct the proper analysis in order to comply with CEQA. These previous examples, coupled with numerous references to “doing it right (conducting the CEQA studies on the GPS amendment) at FGC meetings give full credence and support to the argument that the proposed GPS amendment is not exempt from CEQA.

A proposed regulation amendment to Section 265 that should pass the regulatory standard exemption threshold would be for the FGC to either: (1st choice) do as other states are considering, and ban hound hunting altogether, which at least one state has already done; or (2nd choice) join the other 39 states on the mainland that prohibit deer-hound hunting entirely. The only states that allow deer-hound hunting are located in the Deep South, and many of them are increasing the zones or areas where the activity is banned as well.

II. Substantial Evidence to Override Regulatory Standard Exemption

Allowing GPS collars will increase poaching opportunities and associated impacts.

³ Exertion or Capture Myopathy.

“Risk Factor: Exertional or capture myopathy (disease of the muscle) is a non-infectious disease of muscles that is characterized by damage to muscle tissues brought about by physiological changes, usually following extreme exertion, struggle and/or stress.... Early signs include increased breathing and heart rates, increased body temperature, or sudden death.

⁴ The April 2009 Final Statement of Reasons regarding the Commission’s decision not to change this section of the code states:

If the treeing switch were allowed, the hunter would have no need to follow the dogs on foot during the chase. The hunter could just wait until the treeing switch went off and walk to the tree and find the treed animal and dogs with telemetry equipment. Without the use of a treeing switch device, the hunter is required to follow the dogs on foot and be with the dogs when an animal is treed or be close enough to hear the barking of the dogs to determine if an animal is treed. The use of treeing switches on dog collars would limit the sporting aspect of fair chase.

Poaching, as the illegal take of fish and wildlife, is a critically important issue to the citizens of CA, the nation, and worldwide and can be a huge impact to wildlife, ecosystem balances, and environmental protection, especially as poachers become more sophisticated in their modus operandi and utilize the high-tech electronics. The degree of concern and gravity of the poaching is evidenced in part by CA legislation that went into effect this year which significantly increased fines and/or incarceration involving "trophy" wildlife (FGC Section 12013.3). Additionally, CalTIP's ("Californians Turn in Poachers and Polluters") secret witness program (no state funds used) states that some of the most commonly poached species are deer, bear, antelope, elk, etc. CalTIP's website states that poaching's full impacts on CA's ecology is impossible to gauge [due to its clandestine nature].

A FGC's webpage contains a CDFW's "Current Issues, Fall 2010" report entitled, "Poaching of Wildlife." It states that a mid-1990 study estimated an approximate \$100 million worth of CA's native wildlife is being poached annually for profit or personal game, second only to the illegal drug trade in black market profitability. With inflation, and more sophisticated electronic poaching operations, that amount has most likely greatly increased. The nexus to the GPS amendment is that the report also confirms that most of CA's poaching occurs in remote areas. With smart phones and GPS device technology advances, poaching is now conducted even more "below the radar."

We submit that the GPS amendment will create, if not encourage, even greater increases in poaching because with trained and untrained dogs ranging further from their handlers, the chances of "accidentally" treeing mountain lions, bears, and bobcats are more likely to occur with lethal poaching outcomes. In lifting the ban on treeing switches, the proposed GPS amendment illogically concludes that because deer and pigs do not climb trees, the ban on tree switches is no longer needed, when the exact opposite is true. If deer and pigs do not climb trees, then there is no justifiable reason to allow treeing switches, especially when it is likely that mountain lions, bear, and/or bobcat will be treed and provide opportunities for poaching.

A. GPS collars will allow poachers to release hounds, trained and/or untrained, into remote, back woods areas where law enforcement does not have the capacity to patrol regularly. An example that provides compelling, substantial evidence to prove the GPS amendment will create increased significant poaching opportunities is evidenced by a recently publicized poaching ring "bust" in the state of Washington (Attachment A). The use of GPS collared hounds was instrumental and critical for the successful poaching operations and the excessive degree to which wildlife was wantonly killed. GPS collars facilitated poachers' discovery of cornered, treed, or indiscriminate pack-attacked wildlife. Part of the Washington poaching operation involved "lookouts," radios, and cell phones to avoid detection. With such poaching operations, lookouts call or text poachers to report any presence of wildlife officers, so that no firearms would be discharged to attract the officers' attention.

In their reports, the Washington Department Fish and Wildlife's (WDFW) included video and photos taken by the poachers. Attachment B includes excerpts from ("Case") reports with narrative and captions attributed to WDFW wardens and other staff that accompany the photos or videos.⁵ All 29 cases cited in the Seattle Times article are

⁵ Seattle Times

Suspects' phones led Northwest investigators to carcasses in one of the biggest poaching cases they've ever seen

not included in Attachment A. The case numbers are for tracking purposes of this comment submission only and relate to the order of the cases included in the article.

B. In our comment letter dated April 13, 2017, which was included in the Meeting Documents, Staff Summary, for the April 26, 2017, which we incorporate by reference, we pointed out the many inaccuracies and misrepresentations in the Memo dated March 27, 2017, from the CA Department of Fish and Wildlife (CDFW) Director to the FGC Exec Director. That Memo included a "Briefing Paper" (aka "Briefing Document," "Background document," etc., cited above). With regard to the topic of poaching, the briefing paper states under "F. Enforcement considerations" that GPS collars "could benefit California's wildlife officers who are conducting poaching or hunter trespass-related investigations. That might be true with poachers who lack intelligence or as the Washington ring bust indicated, become sloppy and egotistical with their crimes. As the FGC has been informed both in oral and written comments regarding this topic, for poaching and/or hunter-trespass related investigations, any hounder using a GPS tracker device is able to erase or delete both stored data and history and render it useless for investigations. Thus, any GPS retrieved data to assist in wildlife officer investigations would be minimal.

GPS dog collar manufacturers provide explicit instructions on how to clear dog and hunter "breadcrumbs" from the Tracking screen, and how to reset the trip computer. Even more data can be permanently erased with a factory reset. The briefing paper also misrepresents GPS data used in court. The GPS devices used in court cases are often for entirely different purposes, situations, and with very different GPS devices. They have no real bearing on GPS dog collars, unless the hounder is ignorant of the device capabilities (as were the poachers in the Washington case cited earlier).

To support or validate poaching or trespassing investigation benefit claims of allowing GPS devices, the FGC or CDFW must provide examples of such GPS evidence having been used successfully to cite, prosecute, and convict poachers using GPS data. It is well established that poaching problems exist and are exacerbated with modern technology. Wildlife officers would be spinning their wheels in their investigations of well-established poaching operations. Prior to the FGC's delaying implementation of the GPS ban in CA, any use of GPS collars to hunt mammals would constitute poaching, and hounders could be clearly and easily be cited by wildlife officers. By allowing GPS, wildlife officers' apprehension of poachers will be much more difficult and costly with time wasted in dead end investigations. By legalizing GPS, poachers will claim they are hunting only for non-game mammals, deer, or pigs, when in fact that may not be true. Therefore, keeping the GPS ban will be hugely more beneficial to the regulatory standard of environmental protection than allowing GPS. Without proper CEQA analysis, the impacts of GPS poaching operations will not be fully grasped or dealt with appropriately.

III. Allowing GPS collars will bring more hounds and hound hunters, as well as trained and untrained hounds and handlers into California to hunt deer and pigs, and to train.

Because FGC or CDFW keeps no records and/or has no statistics as to the numbers of dogs (1) used for hound hunting in California; (2) released to train in CA's wildlife habitat; and/or (3) brought into California from out-of-state, especially to deer-hound hunt (California is the only state on the mainland other than nine Deep South states that allows deer-hound hunting—potentially drawing from all western states), a most likely impact from allowing GPS for mammal hunting is an increase in all hound hunting but especially in deer-hounding. Allowing GPS will result in an influx of

hounds bringing both trained and untrained dogs and releasing them to “see what happens.”

At least two houndsmen spoke before the FGC on April 26, 2016, in Santa Rosa, and provided proof that hounding activities would increase with dropping the ban on GPS. Allowing GPS on hounds to hunt mammals is an expansion of hound hunting activities and therefore an expansion of their impacts. To dismiss these impacts as “speculation” is no more speculative than to consider this proposed GPS amendment with no baseline, no data, and no knowledge of the number of hounds released and consider it exempt because “...it’s just adding a collar.” Without a solid understanding of how many hounds are being released, how many cross scent and injure or kill targeted and non-targeted wildlife, it follows that the regulatory standard to protect the environment is not functioning as mandated.

A precautionary ecosystem-based approach to regulations is based to a great extent on a foundation of scientific data and must be part of any regulatory standard of CA’s Natural Resource agencies. The fact is that neither the FGC nor CDFW has any way of knowing the degree of hound hunting activities in CA, yet they have proposed loosening a regulation on a consumptive activity that is not monitored and known to create opportunities for both poaching and wildlife impacts (injury, death, myopathy, etc.). Such reckless disregard for environmental protection also suggests that the proposed GPS amendment is an abandonment of the Precautionary Principle.⁶

At the very least, the FGC and/or CDFW must require hounder reports, keep records, analyze the increase in hound activities that GPS will bring, and it must present facts to support any GPS proposed amendment that has known impacts, such as poaching. The agencies’ “opinions concerning matters within its expertise is of obvious value, but the public and decision makers should also have before them the basis for that opinion so as to enable them to make an independent reason judgment.” (Santiago County Water Agency, *supra*, 118 Cal.App.3d at p. 831)

We would add to that statement the need for transparency, especially when consumptives with self-serving interests, or conflicts of interests, may be influencing policy decisions. With no sense of the magnitude of hound hunting activities and impacts in the State, blindly adopting a GPS amendment with no analysis, portends of a reckless abandonment of adopting responsible regulatory Fish and Game Codes that protect our natural resources—in this case, both targeted and non-targeted animals.

IV. Unsubstantiated and/or physically impossible claims of timely intervention to stop altercations, confrontations, trespassing, or dangerous road crossings

Another reason stated by hounders to drop the GPS ban is to enable immediate and timely interventions in dog/wildlife/domestic pet altercations, confrontations, trespassing onto private property or “off limits for hunting” public properties, or to curtail dog(s) from crossing roadways. Because GPS collars will allow dogs to range many miles,⁷ to stop an injurious or lethal encounter between hounds and wildlife, or dog aggression within the pack, or to stop hound(s) from crossing roadways, requires immediate intervention—either in minutes if not seconds.

⁶ The Precautionary Principle (PP) is referenced in a multitude of FGC and CDFW documents, indicating the agencies’ familiarity with its concepts. In general, the PP supports taking extra measures and enacting policies to protect the environment from what might cause harm, even if there’s no scientific evidence that a hazard exists. The PP considers “risks” or “threats” that have not materialized into harm.

⁷ Garmin Alpha 100 GPS training & Tracking Collar—9 mile range, expandable up to 20 dogs.

Landowner conflicts due to trespass by dogs are one of the most common impacts⁸—especially to livestock and/or on private properties where owners consider their properties to be wildlife “refuges” and off limits to any trophy or recreational hunting. GPS collars with ranges of 8 to 9 miles or more will allow hounds to roam well beyond the hounders’ ability to recall the dogs and/or to physically intervene. GPS collars will not facilitate a dog handlers rapid movement to the scene or the chase. Physical intervention to stop dog’s illegal trespassing, invasion of private property rights, and harassment of livestock, at even 4-5 miles out, especially in rough brushy terrain, cannot possibly be either immediate or timely. For immediate and timely intervention, hounders must be keeping up with their dogs and calling them back repeatedly before they are out of range. Thus, GPS collars will be an incentive for hounders to not physically keep up with their dogs and trespassing impacts will be exacerbated and they will not provide for immediate intervention.

V. Revised comments from previous motion that are relevant to the current motion, urging a no vote to amend Section 265 (April 13, 2017)

Hounders claim that hound hunting is tradition or heritage, and have erroneously wrapped GPS collars in the mix. Traditionally, hunters went into the brush with the hounds, followed and kept up with them—that was part of the ethical sport of the hunt. Using tethered or leashed dogs was commonplace on untrained or unreliable dogs. Today, keeping track of dogs’ location via a GPS digital screen is a counterfeit claim of heritage, tradition, fair chase, or ethical sportsmanship. With GPS collars, any incentive to vigorously train and release only reliable, solid dogs, that can be controlled and recalled on command, is reduced or nonexistent. GPS collars for mammal hunting and training are unacceptable expansions of technology to take or harass wildlife, and in the process increase unacceptable disruptions of wildlife activities, as well as risks of injury and/or death to both dogs and wildlife with altercations.

We and others have debunked the exaggerated claims by hounders that GPS collars will allow faster intervention (in altercations with protected or unlawful species resulting in injury or death; wildlife disturbances that impact migration patterns, nesting habits, mating, abandonment of young, etc.). This has been documented enough in both oral and written comments to the FGC. The reality is that in rough, roadless, heavily brush/wooded areas, hounders cannot physically reach critical locations in a timely manner when every second counts. GPS collars will not in any way increase hounder intervention when every second counts with those types of wildlife encounters (nor with most public roadway crossing of hounds on a chase), yet those negative encounters and resultant injuries, death, or devastating disruptions, are likely to increase because of the GPS collars’ opportunistic incentive to release not only more hounds but also hounds that are not solidly trained.

Another area that has not been examined and supports rejection of the current proposal to allow GPS collars is the economic burden GPS collars, if allowed, imposes on law enforcement—which will be increased if the ban is approved. GPS collars will tempt poaching scofflaws to claim they’re hound hunting a legal species (yet tree or hound-catch an illegal animal). It will also provide incentives and temptations to collaborate with hunters who hold proper tags for bears or bobcats that are illegal to hound hunt to participate in “will-call” hunting (the hounder notifies the “client” of the GPS coordinates of the treed or cornered wildlife and removes the dogs when the client arrives to kill the animal).

⁸ Virginia DGIF, “A Report on Deer Hunting with Dogs,” January 2016

GPS collars will allow “deer drives,” which are the antithesis of fair chase and ethical hunting. It is legal the nine in the Deep South states that allow deer-dog hunts with hounders releasing dogs to chase deer. As the pursuit progresses, the hounders call or text the exact coordinates as to the direction the deer is headed so that the “stands” (hunters waiting at the end of the deer drive) can adjust their locations as GPS coordinates change, and simply fire away as the completely exhausted deer (or other animal) emerges.

The Colorado Parks and Wildlife Commission’s Fair Chase Policy subscribes to the North American Model of Wildlife Conservation, deals with evolving technologies, and commits to carefully weighing technological benefits in the interests of preserving Fair Chase.⁹ Their articulations of technologies and practices that may provide hunters with an **improper or unfair advantage** include:

1. A technology or practice that allows a hunter or angler to locate or take wildlife without acquiring necessary hunting and angling skills or competency.
2. A technology or practice that allows a hunter or angler to pursue or take wildlife without being physically present and pursuing wildlife in the field.
3. A technology or practice that makes harvesting wildlife almost certain when the technology or practice prevents wildlife from eluding take.¹⁰

Those three improper advantages are exactly what GPS collars will create if the GPS **ban** is not approved.

We urge a NO vote to the proposed amendment to Section 265 to not allow GPS collars and treeing switches to be used in hound hunting.

Thank you for considering our views.



Marilyn Jasper, Chair
Public Interest Coalition
Conservation Comm, Sierra Club Placer Group
Humane Society of the Sierra Foothills, Pres.

⁹ Colorado Parks and Wildlife Commission, “Hunting and Fishing Fair Chase Policy,” June 2016.

¹⁰ Ibid.

ATTACHMENT A

Suspects' phones led Northwest investigators to carcasses in one of the biggest poaching cases they've ever seen

Originally published October 12, 2017 at 6:00 am Updated October 16, 2017 at 10:01 am



1 of 7

On left: A photograph shows a rifle scope highlighting a bobcat sitting in a hooked tree. GPS data led investigators to the same tree. On right: William Haynes holds a camouflaged shotgun that police say he used to kill bears, some at close range. The blood spatters visible on Haynes' face, shirt and gun are allegedly from a bear that... (Washington Department of Fish & Wildlife) [More](#)

A remote wildlife camera in Oregon led officers to the suspects. Then texts, videos and social-media posts on the suspects' phones led the officers into the forest. (Note: Some people may find images disturbing.)

--- By Evan Bush -- Seattle Times enterprise producer

Hounds bay at a dark figure obscured in the thick branches of a tree towering above.

"Right here, Bryan, a headshot right there," a man says.

The barking drones on repetitively, at the cadence of an alarm clock.

Then, a snap of rifle fire erupts. For just a second — silence. Then a bear tumbles from the tree, smacking a few branches on the way down and hitting the ground like a sack of potatoes.

Several men rush through ferns and around trees to the drop zone.

"I'm going to hit it again in the neck," says one man. Another steps forward and lifts the bear's eyelids with his fingers, then tells a companion to let the barking dogs loose on the bear.

"He's done. Turn 'em loose," he says, waving off any more gunfire. "Yes, he's dead."

Dogs rush the bear and sink their maws into its fur. They twist their heads violently and wag their tails with barking now muzzled by flesh.

"You get it on video?" someone asks.

MORE THAN A DOZEN SCENES like this, recorded on cellphones, are now evidence in an investigation of a network of alleged poachers in Southwest Washington.

Washington Department of Fish and Wildlife (WDFW) investigators believe the videos, which were taken by the subjects of a lengthy investigation, show dozens of illegal wildlife kills.

Since August, the Skamania County prosecutor has charged eight people with 191 criminal counts, including 33 felony charges.

In this case, 80 of the counts were for unlawful hunting of big game. That's nearly as many charges as WDFW investigators pursue in a typical year, according to the agency's case disposition data.

Fish and Wildlife investigators say they've never seen a case this big, or this disturbing.

"It's an eye-opener about what's going on in these woods," said Officer Denis Budai.

["Case files outline poaching ring's alleged activities in Washington"] See separate document, "29 Case Files—Poaching--WA DFW"

Poaching — unlawfully taking fish or game — can describe a number of crimes: Not having a proper license to hunt, hunting out of season or hunting in restricted areas.

Using dogs on recreational big-game hunts is also illegal, as is leaving carcasses to rot.

In this case, bears and bobcats were allegedly cornered by hunting hounds before being shot and left to waste.

Evidence collected by police shows much of the hunting was done in broad daylight in the Gifford Pinchot National Forest in Southwest Washington. But investigators say they might've missed it if not for images caught after nightfall by a motion-sensitive camera.



A photo from the WDFW case files shows a man holding up a dead bobcat. Wildlife officials concealed the suspect's face. Officers say the photo was taken from a phone seized in their investigation, and say they are pursuing cases against more suspects. (Washington Department of Fish & Wildlife)

Officers never received a tip about the suspects. They believe the suspects used lookouts and radios to avoid detection.

"If I miss this, what else have I missed?" wondered Sgt. Brad Rhoden, who managed the investigation.

What motivated these suspects to allegedly kill the animals will almost certainly be a topic of courtroom discussion. It wasn't for meat or hides, which often were left behind.

None of those charged answered a reporter's questions about the alleged crimes. Most could not be reached. One hung up on a reporter. Lawyers for three suspects declined to comment.

Officers wonder if a culture of selfie sticks and social media fueled them.

"Nowadays, with social media, people want likes on Instagram and Facebook and bragging rights with buddies," said Officer Tyler Bahrenburg, who helped work the case.

If it did not motivate, that impulse to share certainly helped unravel the conspiracy.

Over nearly nine months, investigators stitched together hundreds of text messages, videos, photographs and social-media posts to develop this case.

One suspect, William J. Haynes, allegedly texted his mother a selfie of himself covered in splatters of a bear's blood. "We were a little close when they shot it haha," he wrote.

Text messages found on suspect's phone aided investigation

Washington Department of Fish & Wildlife investigators seized William Haynes' phone and allegedly found videos, phone messages and communications detailing multiple hunts. In a message on Sept. 7, 2015, Haynes allegedly told his mother that hunting dogs chased a large bear to its death.

Source: Washington Department of Fish & Wildlife
EMILY M. ENG / THE SEATTLE TIMES

Have u made it home yet with a kill hopefully a cougar

Mom // 2:27 p.m.

Almost home... today we struck a huge bear right after daylight ran it for about 4 hours and the Gps said the dogs...were all sitting on the edge of about a 300 foot cliff. The bear ran right off it into the river dead as hell. From the size of the tracks it was around 350-400 pounds it was a huge bear.

William Haynes // 2:49 p.m.

Did you guys try to climb down and get the bear

Mom // 3:23 p.m.

We tried finding a trail for almost an hour but never found anything. It was literally one step you were in the bottom

William Haynes // 3:25 p.m.

Thats to bad but did u have fun

Mom // 4:33 p.m.

Another, Joseph Dills, who pleaded guilty to poaching charges in 2008 as part of a group whose members called themselves the "Kill 'Em All Boyz," posted photos on his public Facebook page that showed him posing next to the heads of two bucks police believe were killed in Oregon and illegally brought to Washington.

In another photo, Dills and Haynes stood in front of a pickup truck with hunting dogs in the bed, two dead bobcats on the hood, and their middle fingers raised at the camera.

Members of the group also shared videos in private Facebook messages of hunting dogs chewing on bears. They planned hunts via text message.

In a message from March last year, Dills told Haynes his father was setting up a camp at a lake they'd visited previously.

"... you ready for that again? All that death and caos [sic]?" he asked.

Haynes replied with an expletive in the affirmative.

As the suspects tracked game, their phones tracked them.



On left: Suspect William Haynes poses with a dead elk. On right: Joseph Dills stands over a dead elk that police allege was killed by his girlfriend, Aubri McKenna. (Washington Department of Fish & Wildlife)

GPS coordinates attached to photos and videos found on seized phones led to dozens of kill sites where police say physical evidence could be found to corroborate charges.

Selfies and text messages also revealed a broader network of illegal hunters, police said. Every phone seized under search warrant seems to yield more suspects.

Rhoden expects several more rounds of charges as investigators comb through more digital evidence.

"It just kept snowballing as the investigation went on," he said. "It just spiderwebbed."

THE INVESTIGATION hardly started as a barnburner.

Last November, Oregon State Patrol officers, using a motion-triggered camera, captured images of people in a Toyota truck shining a spotlight on national forest land near The Dalles, according to WDFW investigative reports. Two people were seen getting out of the truck with rifles and head lamps.

The Oregon troopers suspected the men were spotlighting, an illegal method of hunting animals whose eyes shine brightly when hit with lights in the dark.

Soon after, the officers found a headless deer carcass in the forest near where the truck was spotted.

A few days later, on Dec. 3, the same troopers recognized the truck during a patrol, according to WDFW reports. They pulled it over.

Haynes and Erik C. Martin soon confessed to killing two bucks and a silver-gray squirrel, according to the reports. They admitted to taking the deers' heads back to Washington.

Oregon police got in touch with WDFW officers, who followed the suspects to the home Haynes lived in with his father. WDFW officers received consent to search the home, according to the reports.

Inside the garage, the officers found "a freshly-cut deer head," according to report written by Budai. Out in the backyard, "the odor of rotting flesh was very strong," he wrote. Hidden behind an old truck, the officers found 12 deer heads. Seven were wrapped in plastic bags, two were rotting with maggots, two more had been cut and cleaned into skull caps. Officers later found a pair of fresh antlers hidden inside a tire.

According to the reports, Martin told an officer he had more deer skulls at his house. By night's end, the officers had seized 27 buck deer heads, most of them from Oregon, according to a probable-cause affidavit filed in Skamania County Court.

Oregon police are still investigating these hunts for possible crimes.

WDFW investigators also seized the men's phones and obtained warrants to search them.

The phones yielded four new suspects and "over 50 instances" of unlawful hunts, according to the reports.

The suspects and charges

So far, there are more than 190 charges related to this poaching investigation.

The suspects:

- Joseph A. Dills, 30, of Longview (64)
- William J. Haynes, 23, of Longview (61 counts)
- Erik C. Martin, 23, Kelso (28)
- Eddy Dills, 57, Longview (26)

The charges:

Each man faces at least one felony charge of unlawful hunting of big game. Each also faces at least one misdemeanor count of:

- Unlawful hunting of big game
- Hunting black bear, cougar, bobcat or lynx with aid of dogs
- Waste of fish and wildlife

Also charged:

Bryan C. Tretiak, 31; Aubri N. McKenna, 35; Kyle S. Manley, 35; and a 17-year-old girl all face at least one count of misdemeanor unlawful hunting of big game, and at least one count of hunting bear, cougar, bobcat or lynx with the aid of dogs. The 17-year-old was also charged with one count of waste of fish and wildlife.

Source: Charging documents from the Skamania County Prosecutor's office & information from the Superior Court Clerk's office



Dogs bark in the forest. Video allegedly taken the day of this scene showed dogs baying beneath a bear that had crawled up a tree. A subsequent photo, allegedly seized from a suspect's cellphone, showed dogs surrounding and chewing on a dead bear. (Washington Department of Fish & Wildlife)

By investigation's end, the officers would visit about 20 kill sites in the Gifford Pinchot National Forest.

ON A SUNNY DAY in July more than eight months after the investigation began, officers were racing the clock to search for physical evidence at kill sites in the Gifford Pinchot National Forest.

Washington's statute of limitations restricts prosecution of gross misdemeanor crimes to two years after they occur. But lingering winter snowpack and washed-out roads had kept officers at bay.

Now, summer's heat reigned.

Soon, the officers set out on a hike with their eyes glued to their GPS devices.

Then, they came to a halt before a pine tree with heavy boughs.

A pile of bones sat at its base.

Budai waved a metal detector over the ground near the bones, which would occasionally let out a beep as if it were a supermarket checkout.

"I picked something up," Budai said.

Bahrenburg pulled some latex gloves from his pack before crouching in the brush. The two picked up a pile of matted fur thick with pine needles and sticks, and crumbled it through their hands, searching.

Budai picked out a two-inch bear's claw. A few minutes later, he pulled a deformed mass from the pile — a shotgun slug.

The officers fanned out and scanned the understory for a shell. They might be able to make a forensic match to one of the suspects' guns.

Nothing turned up.

The slug was more important, though.



1 of 4

A dead bear lies at a suspect's foot. Using dogs for bear hunting, unless permitted by the Washington Department of Fish & Wildlife for specific activities, is illegal in Washington. (Washington Department of Fish & Wildlife)

Suspects had told officers they had allowed their dogs to tree the bear, but hadn't killed it, Rhoden explained.

Now packed away in Bahrenburg's pack, the hunk of metal could remove an argument in court.

"That takes away the idea that it [the bear] died of natural causes," Rhoden said.

At times, the officers' task seemed absurd.

"Finding a single tree in the forest," Budai said later that day en route to a second site as the officers scrambled (and sometimes tumbled) down an embankment steep enough to be a ski hill, thick with vines and old-growth trees.



Officers Tyler Bahrenburg, left, and Denis Budai, right, used GPS data attached to images allegedly taken by poaching suspects to find kill sites. Then, they used the images themselves to find the specific location, often a tree, where animals were killed. "Nine times out of 10, there was a carcass there," Budai said. (Evan Bush / The Seattle Times)

They were tracking down GPS coordinates attached to a video that showed a rifle scope lingering over a bobcat sitting atop a hooked tree.

Within a half-hour, they spotted the same crooked limb, and photographed the area.

POACHING IS an age-old practice.

Present-day poachers kill for "a variety of reasons," said Steve Eliason, a sociology professor at Montana State University.

Sometimes, it's a crime of opportunity, Eliason said: A massive buck runs by and a hunter can't resist.

Some are hoping for a payday. Bahrenburg said a bear's gall bladder can fetch hundreds on the black market.

For others, poaching can serve as protest.

"Some people may do it as a type of rebellion. They may be angry at the government," Eliason said.

Or they may merely seek thrills.

In this case, text messages outline planning, and there's no evidence any animal parts were sold, WDFW investigators said.

Many times, the alleged poachers left entire animals to waste, so they weren't always seeking meat or a physical trophy.

In the digital age, however, trophies aren't always physical. For these suspects, grisly photos and videos may have been the ultimate prize.

Editor's note: The comment thread on this story has been closed to new submissions because too many recent comments were violating our Terms of Service.

Seattle Times news researcher Miyoko Wolf contributed to this story.

Evan Bush: 206-464-2253 or ebush@seattletimes.com On Twitter @evanbush

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[An updated version of this article can be found at this Seattle Times website:
<http://www.kiro7.com/news/local/photos-show-suspected-poaching-ring-gloating-over-illegal-kills-now-they-face-nearly-200-charges/627559709>]

ATTACHMENT B

[Case files #1 thru 8]

1. Using dogs for bear hunting, unless permitted...for specific activities is illegal in Washington.
2. From photo caption: Officers say this screenshot from a video shows the 17-year-old suspect killing a bear as it crosses a road while fleeing hunting dogs.
3. From narrative: "...Then today we struck a huge bear right after daylight ran it for about 4 hours and the Gps [sic] said the dogs were bayed up about 800 yards from the road so we walked in and the dogs were all sitting on the edge of about a 300 foot cliff. The bear ran right off it into the river dead as hell...." —Excerpt of Haynes text messages (contained in WDFW case files)

From photo caption: "A bear climbs a tree, apparently to get away from hunting hounds. Police say Haynes told his mother in a text message that hunting dogs pursued cougars, bobcats and bears during their trip. The dogs chased a large bear for four hours before it ran off a cliff, fell into a river and died Source: WDFW

6. From narrative: "I asked W. Haynes to describe how they hunt these bears. He indicated they drive around in trucks with dogs at the front of the truck and the dog box. He said the dogs then strike off the truck. Note: strike means when a dog catches a scent of an animal trained to pursue. He said they usually take 2 or 3 trucks and they have radios to communicate between vehicles." Excerpt from WDFW case file. Source: WDFW

From photo caption: This photo of hunting dogs was taken by Haynes, police say. The dogs wear GPS tracking collars, according to police reports.

7. Narrative: "I asked W. Haynes about the blood on his gun and face, he said it was from the bear. He got close to the bear and as the dogs chewed on the bear they splashed blood over his face." —Excerpt from WDFW case file

Case Files #9 thru 18:

9. From photo caption: Hunting hounds surround a dead bear. No GPS coordinates were recovered from this photo, but WDFW investigators were able to triangulate and map its location using pings from a cellular tower, an officer wrote in an investigative report.
11. "We were able to find the location of the GPS coordinates and match up the area to the images captured by W. Haynes' cellular device. As we checked the area for bear remains, we found remains of a cub bear." Excerpt from WDFW case file. Source: WDFW
12. Narrative: "Based on the GPS coordinates of pictures showing J. Dills and Haynes inside a special permit only unit with 2 dead elk, our confirmation of these GPS coordinates as well as finding bones near these kill sites, J. Dills and Haynes unlawfully killed 1 elk each in a special permit only area without possessing the permits necessary." — Excerpt from WDFW case file. Source: WDFW
13. A suspect trains the scope of a rifle on a bobcat sitting on a tree branch. WDFW investigators, following GPS coordinates, were able to locate the crooked tree branch seen in the photo.
15. Narrative: "The first video ... shows several dogs with GPS enabled dog [collars] chewing on a deceased black bear. In this video, I can hear a male voice calling saying

'get em Jip,' encouraging this dog to continue chewing on the bear." —Excerpt from WDFW case file

16. Photo caption: A photo police say was taken from Haynes' phone shows dogs surrounding a dead bear in a creek.

Case files, #19 thru29:

19. Narrative: "Once the bear was shot, it begins to tumble down a small hill where the group of dogs begins chewing on the bear." — Excerpt from WDFW case file

Photo Caption: Dogs surround a dead bear. Investigators found video at the same location that allegedly shows a suspect firing shots at a bear exhausted after running away from hunting dogs. "Get 'em boys," a suspect yelled, encouraging the dogs to chew on the bear.

20. Narrative: "The video is filmed on a gravel road. At about the 5 second mark after J. Dills makes his remark about the dogs I see a dog that J. Dills uses for hunting cross the road in front of them and then head into the woods." —Excerpt from WDFW case file

Photo caption: A screen shot from a video allegedly shows a hunting dog crossing, down the road from of the vehicle.

24. Photo caption: A photo allegedly taken from Haynes' cellphone shows dogs surrounding a dead bear.

25. Photo caption: Dogs bark in the forest. Video allegedly taken the day of this scene showed dogs baying beneath a bear that had crawled up a tree. A subsequent photo, allegedly seized from a suspect's cell phone, showed dogs surrounding and chewing on a dead bear.

28. Narrative: "During Officer Budai's interview with W. Haynes on March 12, 2017, he indicated that the text messages he sent to the Dills' and [redacted] about the 'Game Wardens' was after he was contacted by Officers Bahrenburg and Budai. He said he left the area and tried to contact the other people not to shoot because the Officers were in the area." —Excerpt from WDFW case file

29. Photo caption: A dead bobcat hangs on a tree limb. Police say Eddy Dills used hunting dogs to chase the animal up a tree.

Crockett & Associates

Courtney Vaudreuil
23504 Lyons Avenue, No. 401
Santa Clarita, California 91321
323-487-1101 | 323-843-9711 fax
vaudreuil@bobcrockettlaw.com
www.bobcrockettlaw.com

VIA EMAIL: fgc@fgc.ca.gov

November 22, 2017

Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Meeting Agenda December 6, 2017 – Item 6

Dear Commissioners:

On behalf of the Animal Legal Defense Fund, we submit the following comment on Agenda Item No. 6: “Adopt proposed changes for regulations for the use of GPS-equipped dog collars and treeing switches for dogs used to pursue/take mammals or for dog training (Section 265, Title 14, CCR).”

Background

The California Code of Regulations restricts the use of dogs for the “pursuit/take of mammals or for dog training” through a series of seasonal and geographical restrictions. (*Id.* at § 265, subs. (1), (4).) The use of dogs is strictly prohibited for specific species, with limited exceptions for takes pursuant to a depredation permit. (*Id.* at § 265, subs. (2)-(3).)

In 2016, the Fish and Game Commission (CFGF) adopted changes to section 265, which included removing subsection (d) in its entirety. That provision read as follows:

(d) Prohibition on Treeing Switches and Use of Global Positioning System Equipment.

- (1) Tree Switches. Electronic dog retrieval collars containing functioning treeing switches (devices consisting of a switch mechanism that results in a change in the transmitted signals when the dog raises

its head to a treed animal) are prohibited on dogs used for the pursuit/take of mammals.

- (2) Global Positioning System Equipment. Electronic dog retrieval collars employing the use of global positioning system equipment (devices that utilize satellite transmissions) are prohibited on dogs used for the pursuit/take of mammals.

On November 2, 2017, CFGC issued an Initial Statement of Reasons for the deletion of subpart (d). In regard to tree switches, CFGC never considered the impact that would result from allowing the use of tree switches, despite the regulatory ban on the hunting of animals impacted by the device (e.g., bears, bobcats, mountain lions). The only “analysis” CFGC completed on this issue was to consider whether there was another way to eliminate the regulatory language without deleting the regulatory language. This self-serving methodology ignores the intent and purpose of CEQA, because it fails to in any way to consider the environmental impacts that will result from deleting subpart (d).

The March 27, 2017 Memorandum

After its precipitous act in removing the prohibition on tree switching and GPS equipment without proper CEQA review in 2016, CFGC faced a CEQA challenge. (See *Public Interest Coalition v. California Fish and Game Commission*, Sacramento Superior Court Case No. 34-2016-80002350 (May 16, 2016) (alleging violations of CEQA and Fish & Game Code, §§ 3960 and 3008, Penal Code, § 597b, and the Fair Chase Doctrine).) (Exhibit A.)

In response, CFGC prepared a March 27, 2017 memorandum, and stated that it was providing “additional information to assist the FGC in making a decision to either reinstate the ban on this equipment or uphold the previous decision.” The memorandum stated that it was “not intended to be a substitute for an environmental document” and “the Commission will fully comply with CEQA at the time it makes a final decision.”

In the background section of the memorandum, the CFGC describes that the GPS tracking and tree switches are primarily used by hunters for use on “treed animals” such as bears, mountain lions, and bobcats. CFGC appears to argue that because the use of dogs is prohibited in the taking of bears, bobcats and mountain lions, that the GPS and tree switches prohibition is “largely unnecessary.” This premise rests on the false assumption that people will follow the law and not take advantage of technologies that allow them to circumvent it.

Even though the prohibition was claimed to be “largely unnecessary,” CFGC admitted that the impact of lifting the ban will primarily involve the use of GPS tracking. Yet CFGC argues that lifting the ban will aid the hunter to find crippled game more efficiently and locate lost dogs, and allow enforcement to track hunter trespass. (Memo at p. 1.)

At the same time, CFGC completely sidesteps meaningful review of the impacts from removing the ban on tree switches by stating: “With this deletion, dogs could only be used to pursue deer (one dog per hunter during the general season only) and wild pigs (no more than three dogs per hunter). Treeing switches are not used in the pursuit of these species because they are not treed.” (Memo at p. 1.) Tree switches send different signals depending on whether the dog’s head is down or up (as when looking up at a treed animal). This difference alerts the hunter when an animal has been treed. (Memo at p. 3.)

Tree Switches

According to CFGC, tree switches are designed to alert a hunter when an animal is treed. By CFGC’s own explanation, the animals most typically treed (e.g., bobcats, mountain lions, bears) may no longer be hunted by dogs. It is unclear, then, why a device designed for use in treeing animals should now be legalized. If the activity is unlawful, the paraphernalia be as well. CFGC fails to address this whatsoever. Instead, CFGC briefly mentions that tree switches can also alert hunters as to the location of their dogs, though “without the precision a GPS collar provides.” (Memo at p. 3.)

In the March 27, 2017 memorandum, CFGC admits that it only removed the tree switch regulation because “the pursuit of those species that do climb trees has been otherwise legislatively prohibited.” (Memo at p. 4.) If there is no purpose for the tree switches apart from directing a hunter to a treed animal, then there is no reason to allow hunters the temptation of using such a device in the first place. To put it more succinctly: if you cannot hunt treed animals, you do not need a device designed to help you hunt treed animals. Again, CFGC never addresses this fundamental problem. It simply states, without a response, “Opponents argue it is possible some poachers may use these collars to take species for which the use of dogs is entirely prohibited by existing law or regulation.” It is highly probable that such poaching will become more frequent since CFGC is giving poachers a valuable tool to break the law.

GPS Collars

CFGF argues that dogs fitted with GPS collars “would be used primarily to find wounded animals” which would help to avoid waste. (Memo at p. 4.) The same rationale could be made for the radio-telemetry collars that are currently permitted. CFGF provides no explanation for how the difference in technology will make finding “wounded animals” easier. It does not. Instead, as CFGF explains, “[t]he use of these collars is not expected to result in more efficient hunters but rather more dogs that return home.” (Memo at p. 9.) CFGF also notes that the GPS collars can later be used as evidence of where dogs have been in order to prove cases of poaching. However, notably absent from CFGF’s analysis is any response to the criticism that GPS collars allow hunters to release their dogs into larger areas without adequate supervision, which will result in the illegal harassment of wildlife. At a minimum, CFGF is required to consider this criticism and address it. (See accounts of poaching bears using GPS collars in the Gifford Pinchot National Forest at http://tdn.com/news/local/videos-reveal-brutal-pattern-of-killings-in-poaching-case/article_c42106e4-2015-58b2-8672-87059269b983.html, accessed Nov. 22, 2017.)

April 26, 2017 CFGF Meeting

At the meeting on April 26, 2017, CFGF admitted that it had bungled the administrative process in its attempted repeal of subpart (d). Commissioner Sklar stated, “And all this is an error on our part and the Department’s staff part on getting this right in the first place.” He added, “But what they asked for is an environmental review, which is what we’re doing. And so we’re going to be doing that over the next three or four months, and it’s not a very long period of time, and we’ll resolve this this year one way or the other.” Yet while Sklar claimed that the CFGF would actually do an environmental review, he followed this with a comment that shows he had no intention of doing any such thing: “And as long as hound hunting is occurring, from my perspective, GPS collars are beneficial to the safety of the dogs, and that’s where I came down on it.” This comment shows that Sklar had no intention of reviewing and considering the environmental impacts of the GPS hunting *or* the tree switches (which seem to be persistently and frequently ignored by the discussion dominated by the GPS collars). Perhaps this is unsurprising considering that Sklar is an affirmed hunter, according to the CFGF website. It also shows that the Commission is more concerned with the safety of hunting dogs, which do not fall under its purview, than the regulatory scheme that prohibits the harassment of wildlife.

Commissioner Williams apparently also views CEQA as some ministerial task to be dispensed with and not taken seriously. In his comments, he noted that hunters are not bad people and that he would support lifting the GPS collar ban. Sadly, the worldwide

epidemic of the poaching of wildlife does not support Commissioner Williams' overly optimistic assessment. (See, e.g., *Tracking Collars Can Lead Poachers Straight to Animals, Scientists Warn*, available at <https://smithsonianmag.com/smart-news/tracking-collars-poachers-animals-scientists-180962345/>, accessed Nov. 22, 2017 (poachers hacking into wildlife GPS and radio signals).) Commissioner Williams "reluctantly" agreed that CFGC should comply with CEQA, but reiterated that it was a mere formality to do so: "So I will reluctantly support that motion today but strongly support a motion to re-notice the support the allowing GPS collars to be used and tree switches to be used and, that we can, so that we can conduct the right analysis and *put that back in place*."

The Commission then voted that the project was exempt from CEQA pursuant to California Public Resources Code section 15061, subdivision (b)(3).

A governing body ostensibly charged with environmental stewardship treating one of the bedrock environmental laws of our state as a formality merely to be checked off is disturbing and reckless. It is clear that the CFGC has no intention of following the spirit or letter of the law in regard to CEQA.

CFGC's Inadequate Response to Comments

In its response to comments, CFGC further demonstrated that its primary concern is the safety of hunting dogs – not wildlife. Its comments exposed numerous flaws in CFGC's rationale as it endeavors to reach its desired result, rather than dispassionately and logically considering the facts and public input.

For example, P.E.A.C.E.'s January 25, 2016 letter argued that GPS collars and tree switches put wildlife at risk. CFGC *again* completely ignored the comment in regards to tree switches. Instead, it focused on the purported benefits of the GPS collars, including, "If a dog is pursuing a non-target species, the hunter can more quickly find and stop the dog from pursuit." How exactly does that work? The GPS shows the dog, not the species of animal that it is pursuing. Indeed, CFGC's response revealed once again that the agency is solely concerned about protecting hunting dogs and not wildlife.

There are only two places in the comments where CFGC addresses tree switches, and the response is problematic. First, in response to the comment from Marilyn Jasper of January 27, 2016, CFGC states: "The ban on tree switches was eliminated because the only big game animals that can be hunted using dogs are deer and pigs, neither of which can be treed." Later, in response to Ms. Jasper's March 31, 2016 letter, CFGC states, "Tree switches may be used in legal pursuit of non-game animals." What are these "non-game animals" who are typically treed by dogs? Certainly, CFGC is not thinking of birds,

considering that subpart (d)(1) only applies to mammals and not birds. This statement is completely contradictory of CFGC's repeated acknowledgement that animals primarily treed by dogs are bears, mountain lions, and bobcats.

The logical problem with this argument is that (1) the ban is not needed because these devices cannot be used, but (2) they can be used, so it will not encourage poaching. This makes no sense. CFGC provides no coherent response to Ms. Jasper's argument that if the ban is lifted, CFGC is placing a powerful tool – whose single purpose is to allow dogs to tree animals – in the hands of poachers. CFGC needs to clarify immediately its position on this issue.

CFGC Failed To Comply With CEQA

CFGC has an obligation under the California Environmental Quality Act to consider the environmental impacts of the regulations that they approve that may have the potential to significantly impact the environment. (Cal. Pub. Res. Code, § 21000 et seq.) It also has a duty to review the impacts of activities that affect California's wildlife, including the harassment of animals. (See Cal. Code Regs., tit. 14, § 251.1 ["Except as otherwise authorized in these regulations or in the Fish and Game Code, no person shall harass, herd or drive any game or nongame bird or mammal or furbearing mammal. For the purposes of this section, harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering...."].)

At the April 26, 2017 meeting, CFGC voted that the deletion of subpart (d) is exempt from CEQA pursuant to California Public Resources Code section 15061(b)(3). That section provides that an exemption may exist if, "The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." CFGC, however, never made such a finding. In fact, the August 8, 2017 Initial Statement of Reasons contains absolutely no findings regarding impacts to wildlife.

In the March 27, 2017 memorandum, CFGC admits that hunting deer with dogs results in a higher rate of success for the hunters than without dogs. (Memo at p. 6.) CFGC cited a 2004 Final Environmental Document Regarding Deer Hunting that found "in areas where hunters use dogs, deer experience more stress." (*Id.*) CFGC makes no effort to evaluate whether allowing the GPS collars and tree switches may result in increased hunting activity or an increase in the range in which the hunted dogs are sent out that may result

in increased stress for the other species protected by section 265, including bear, bobcat, elk, bighorn sheep, antelope, and mountain lions. Again, this argument was specifically raised in the *Public Interest Coalition* case that GPS collars allow dogs to range farther from their owner, reducing his or her ability to control the dog. There is no effort by CFGC to address these potential impacts.

There are a multitude of other issues raised in the public comments that ALDF incorporates by reference here, including, but not limited to, the PEACE letter of September 26, 2017, and the Public Interest Coalition letter of September 28, 2017.

We request that the CFGC do more than simply go through the motions; and we want it to perform a proper CEQA review. As a final point, I would like to emphasize that all of the arguments CFGC has put forward for GPS collars *do not apply to tree switches*. This conflation of the two provisions of subpart (d) is improper and completely ignores that the only purpose of the tree switches is to let hunters locate treed animals. At a minimum, if CFGC is going to wholesale ignore its CEQA obligations, it should consider leaving subpart (d)(1) in place. If hunters are as ethical as Commissioner Williams believes, they should have no problem keeping a ban in place on a device used solely for the illegal taking and harassing of animals.

Very truly yours,

Courtney Vandrevil
Crockett & Associates

EXHIBIT A

1 LAW OFFICES OF DONALD B. MOONEY
2 DONALD B. MOONEY (SBN 153721)
3 129 C Street, Suite 2
4 Davis, California 95616
5 Telephone: 530.758.2377
6 Facsimile: 530.758.7169
7 Email: dbmooney@dcn.org

8 Friends of Animals
9 Wildlife Law Program
10 Michael Harris (SBN 179544)
11 7500 E. Arapahoe Rd., Ste. 385
12 Centennial, Colorado 80112
13 Telephone: 720.949.7791
14 Email: Michaelharris@friendsofanimals.org

15 Animal Legal Defense Fund
16 Jeffrey Pierce (SBN 293085)
17 170 E. Cotati Avenue
18 Cotati, California 94931
19 Telephone: 707.795.2533
20 Facsimile: 707.795.7280
21 Email: jpierce@aldf.org

22 Attorneys for Petitioner
23 Public Interest Coalition

24
25 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

26 FOR THE COUNTY OF SACRAMENTO

27 PUBLIC INTEREST COALITION)

28 Petitioners)

v.)

CALIFORNIA FISH AND GAME)
COMMISSION and, DOES 1 through 20;)

Respondents)

FILED
Superior Court Of California,
Sacramento

05/16/2016

pvue

By _____, Deputy

Case Number:

34-2016-80002350

Case No. _____

VERIFIED PETITION FOR
WRIT OF MANDATE

BY FAX

Petitioner PUBLIC INTEREST COALITION (“Petitioner”) alleges:

1. By this action, Petitioner challenges Respondent CALIFORNIA FISH AND GAME COMMISSION ("Respondent" or "Commission") April 14, 2016, modification of Title 14 California Code of Regulations, section 265(d)(1) deleting the provision prohibiting the use of treeing switches and section 265(d)(2) deleting the provision of prohibiting the use of global positioning system (GPS) equipped dog collars; and the Commission's failure to prepare an Environmental Document in violation of the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.* and in violation of the Commission's Certified Regulatory Program under CEQA. (Title 14, California Code Regulations, § 781.5.)

2. Petitioner seeks a determination from this Court that Respondents' modification of section 265(d)(1) and 265(d)(2) violates Fish and Game Code section 3960 and the failure to prepare an Environmental Document fails to satisfy the requirements of CEQA, and the CEQA Guidelines, Title 14, California Code of Regulations, section 15000 *et seq.*

PARTIES

3. Petitioner Public Interest Coalition is an unincorporated association working to protect and improve the environmental quality of the State of California, including its wildlife and public trust resources. Petitioner is committed to the environmental values and well-being of California and its citizens. Petitioner is composed of persons whose personal, aesthetic, and environmental interests will be severely injured if the Respondents' modification of sections 265(d)(1) and 265(d)(2) are not set aside. Petitioner's members utilize and enjoy the State's natural resources. Petitioner Public Interest Coalition brings this petition on behalf of all others similarly situated who are too numerous to be named and brought before this court as petitioners. As a group composed of residents and citizens of California, Petitioner is within the class of persons beneficially interested in, and aggrieved by, the acts of Respondent as alleged below. Petitioner Public Interest Coalition and its members participated in the administrative processes herein, and exhausted its remedies.

4. The environment and residents of Sacramento County will be directly affected by the impacts of the Project. ECOS members live, work, travel, and enjoy recreational activities

1 in Sacramento County. These members have a particular interest in the protection of the
2 environment of Sacramento County, and are increasingly concerned about worsening
3 environmental and land use conditions that detrimentally affect their well-being and that of
4 other residents and visitors of Sacramento County. ECOS and its members have a direct and
5 substantial beneficial interest in ensuring that Respondents comply with laws relating to
6 environmental protection. ECOS and its members are adversely affected by Respondents'
7 failure to comply with CEQA in approving the Project.

8 5. Respondent California Fish and Game Commission is a political subdivision of the
9 State of California. The Fish and Game Commission has the responsibility for promulgating
10 regulations to manage sport fishing and hunting. As lead agency for the Project, the Fish and
11 Game Commission is responsible for preparation of an environmental document that describes
12 the Project and its impacts, and, if necessary evaluates mitigation measures and/or alternatives to
13 lessen or avoid any significant environmental impacts. The Fish and Game Commission is
14 responsible for implementing and complying with the provisions of CEQA and the CEQA
15 Guidelines with respect to the Project.

16 6. Petitioner is unaware of the true names and capacities of Respondents identified
17 as Does 1-20. Petitioner is informed and believes, and on that basis alleges, that Respondents
18 Does 1-20, inclusive, are individuals, entities or agencies with material interests affected by the
19 Project with respect to the Project or by Respondents' actions with respect to the Project.
20 When the true identities and capacities of these Respondents have been determined, Petitioner
21 will, with leave of Court if necessary, amend this Petition to insert such identities and
22 capacities.

23 **BACKGROUND FACTS**

24 **A. CALIFORNIA LAW PROHIBITS THE USE OF DOGS TO PURSUE BEAR AND BOBCAT**

25 7. In 2012, the California legislature enacted Senate Bill 1221 which prohibits the use
26 of dogs to pursue bear and bobcat. (Fish & Game Code, § 3960.) California law continues to
27 allow the use of dogs for hunting wild pigs and deer.

1 **B. THE COMMISSION'S MODIFICATION OF REGULATIONS REGARDING USE OF DOGS**

2 8. Title 14, California Code of Regulation, section 265(d) prohibited the use of tree
3 switches and the use of global positioning system equipment on dogs used for the pursuit/take of
4 mammals. Section 265(d) stated:

5 (1) Treeing Switches. Electronic retrieval collars containing functioning
6 treeing switches (devices consisting of a switch mechanism that result in a
7 change in the transmitted signals when the dog raises its head to a treed
8 animal) are prohibited on dogs used for the pursuit/take of mammals.

9 (2) Global Position System Equipment. Electronic dog retrieval collars
10 employing the use of global positioning system equipment (devices that
11 utilize satellite transmissions) are prohibited on dogs used for the
12 pursuit/take of mammals.

13 9. With respect to the tree switches the ISOR stated that the provision is no longer
14 necessary because the equipment might only be used when pursuing an animal that can climb
15 such as a bear or bobcat. The Commission argued that since the legislature recently restricted
16 the use of dogs and prohibited the pursuit of bear and bobcat with dogs, the prohibition on tree
17 switches is unnecessary.

18 10. With respect to GPS equipment, the ISOR asserts that the prohibition is no longer
19 necessary and increases the possibility that downed game (wild pigs and deer) may be lost to the
20 hunter, creating waste. The ISOR also claimed that GPS equipped collars would also aid the
21 retrieval of lost dogs.

22 11. On November 2, 2015, the Commission released the Initial Statement of Reasons
23 for Regulatory Action ("ISOR"), proposing to delete section 265(d)(1) (prohibiting the use of
24 tree switches); and section 265(d)(2) (prohibiting the use of global positioning system equipped
25 dog collars.

26 12. On December 10, 2015, the Commission held a notice hearing on the proposed
27 amended regulations.

28 13. On February 11, 2016, the Commission held a hearing on the proposed amended
regulations.

1 14. On April 14, 2016, the Commission approved the amendments to section 265,
2 which provided for deleting: a) section 265(d)(1) provisions that prohibit the use of treeing
3 switches; b) section 265(d)(2) and the prohibition of the use of global positioning system (GPS)
4 equipped dog collars.

5 **C. THE COMMISSION'S DECISION NOT TO CONDUCT ENVIRONMENTAL REVIEW**

6 15. The Commission's review under the California Environmental Quality Act, Public
7 Resources Code, section 21000 et seq., is pursuant to the Commission's certified regulatory
8 program (CRP) approved by the Secretary for the California Resources Agency pursuant to
9 Public Resources Code section 21080.5. (See generally Cal. Code Regs., tit. 14, §§ 781.5, and
10 15251, subd. (b).). CEQA requires that all public agencies in the State evaluate the
11 environmental impacts of projects they approve, including regulations, which may have a
12 potential to significantly affect the environment.

13 16. Under the Commission's CRP, when the Department of Fish and Wildlife submits a
14 recommendation to the Commission with regard to adopting regulations which may have a
15 significant effect on the environment, or it is anticipated that a substantial body of opinion will
16 reasonably consider the environmental effect to be adverse, the Department's recommendation
17 shall be presented in written form containing: (1) The proposal; (2) Reasonable alternatives to
18 the proposal, and (3) Mitigation measures to minimize any significant adverse environmental
19 impacts of the proposal.

20 17. The Commission's regulations provide that the Commission will not adopt
21 regulations as proposed if there are feasible alternatives or feasible mitigation measures available
22 which would substantially lessen any significant adverse impact which the activity may have on
23 the environment, unless specific economic, social or other conditions make infeasible such
24 project alternatives or such mitigation measures. (Title 14, Cal. Code Reg., § 781.5(g).)

25 18. The Commission concluded that the deletion of section 265(d)(1) and section
26 265(d)(2) will have no negative impact on the environment and no mitigation measures are
27 needed.

1 19. On April 15, 2016, the Commission filed a Notice of Determination with the
2 Resources Agency of California.

3 **JURISDICTION AND VENUE**

4 20. This Court has jurisdiction over the matters alleged in this Petition pursuant to
5 Code of Civil Procedure section 1085, and Public Resources Code section 21168.5. In the
6 alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and
7 Public Resources Code section 21168.

8 21. Pursuant to Code of Civil Procedure section 401, venue is proper in this Court
9 because the California Fish and Game Commission is located in the County of Sacramento.

10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
11 **AND INADEQUACY OF REMEDY**

12 22. Petitioner has performed any and all conditions precedent to filing the instant action
13 and has exhausted any and all available administrative remedies to the extent required by law.

14 23. Petitioner has complied with the requirements of Public Resources Code, section
15 21167.5 by mailing written notice of this action to the Respondents. A copy of this written
16 notice and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

17 24. Petitioner has complied with Public Resources Code section 21167.6 by
18 concurrently filing a request concerning preparation of the record of administrative proceedings
19 relating to this action.

20 25. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
21 unless this Court grants the requested writ of mandate to require respondents to set aside their
22 approval of the Project and certification of the EIR. In the absence of such remedies,
23 Respondents' approval will remain in effect in violation of State law.

24 26. This action has been brought within 30 days of Respondents' filing of the Notice
25 of Determination as required by Public Resources Code section 21167(c).

26 //

27 //

1 **STANDING**

2 27. Petitioner has standing to assert the claims raised in this Petition because
3 Petitioner and its members' environmental interests are directly and adversely affected by
4 Commission's decision to amend/delete sections 265(d)(1) and 265(d)(2) of Title 14 California
5 Code of Regulations.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**
8 **(Violation of the California Environmental Quality Act)**

9 28. Petitioner realleges and incorporates by reference Paragraphs 1 through 27,
10 inclusive, of this Petition, as if fully set forth below.

11 29. The Commission's action in approving the modifications to section 265(d)(1) and
12 265(d)(2) constitutes a violation of CEQA in that the Commission failed to proceed in the
13 manner required by law and the Commission's decision not to prepare an Environmental
14 Document is not supported by substantial evidence in the record. A "fair argument" exists that
15 the amended regulations may have a significant impact on the environment.

16 30. CEQA and the Commission's CRP requires the preparation of an Environmental
17 Document in order to identify the significant effects on the environment of a project, so that
18 measures to mitigate or avoid those effects, or alternatives that avoid those effects, can be
19 devised. (Pub. Resources Code §§ 21002.1(a), 21060; Title 14, Cal. Code Regs., § 781.5.)
20 Compliance with the procedural requirements of CEQA and the CPR sets the stage for
21 development of mitigation measures and alternatives. Without a proper procedural foundation,
22 the Commission cannot comply with CEQA's and the CRP's mandate that the Commission
23 should not approve regulations as proposed if there are feasible alternatives or feasible
24 mitigation measures available which would substantially lessen the significant environmental
25 effects of such projects. (Pub. Resources Code § 21002.)

26 31. CEQA's fundamental goals are to foster informed decision-making and to fully
27 inform the public about the project and its environmental impacts. (CEQA Guidelines §
28 15003.) Its purposes likewise include identifying ways that environmental damage can be

1 avoided or significantly reduced, and preventing significant, avoidable damage to the
2 environment by requiring changes in projects through the use of alternatives or mitigation
3 measures when the governmental agency finds the changes to be feasible. (*Id.* § 15002(a).)

4 32. An Environmental Document under the Commission's CPR must provide the
5 Commission and the public in general with detailed information about the effect that a proposed
6 regulation is likely to have on the environment, to list ways in which the significant effects of a
7 proposed regulation might be minimized, and to indicate alternatives to the proposed regulation.
8 (Pub. Resources Code § 21061; Title 14, Cal. Code Regs., § 781.5.) CEQA defines the
9 "environment" as "the physical conditions which exist within the area which will be affected by
10 a proposed project, including . . . fauna," *i.e.* wildlife. (Pub. Resources Code § 21060.5.) The
11 Commission therefore has a duty to review the impacts of activities that affect California's
12 wildlife. CEQA contemplates take, harm, and harassment of wildlife, the latter of which
13 concerns disruptions to an animal's normal behavioral patterns and therefore encompasses the
14 welfare of wildlife. (*See, e.g.*, Title 14, Cal. Code Regs., § 251.1 (prohibiting harassment of
15 animals).)

16 33. The Commission committed a prejudicial abuse of discretion and failed to proceed
17 in a manner required by failing to prepare an Environmental Document for the proposed
18 regulations.

19 34. Substantial evidence in the record supports a fair argument that the modified
20 regulations may result in harassment of non-targeted wildlife, especially during training.
21 Substantial evidence in the record also supports a fair argument that the modified regulations
22 may result in the potential of increase poaching of animals, including bears and bobcats,
23 through collusion between houndsmen and other hunters, guides, etc. The Commission therefore
24 failed entirely to address the impact its decision would have on the welfare of wildlife.

25 35. The ISOR failed to acknowledge the environmental impacts (targeted and non-
26 targeted wildlife impacts, increased poaching opportunities, etc.) that may, or will, occur if GPS
27 collars and treeing switches are allowed for deer hunting and for dog training purposes. The
28

1 ISOR failed to acknowledge concerns raised by Petitioner and others. The ISOR also omits any
2 description of current baseline conditions that warrant the 265 proposal.

3 36. Based upon each of the foregoing reasons, the Commission prejudicially abused its
4 discretion in violation of CEQA in approving the amended regulations. As such, the Court
5 should issue a writ of mandate directing Commission to set aside its decision to amend section
6 265(d)(1) and 265(d)(2).

7
8 **SECOND CAUSE OF ACTION**
(Violation of the Fish and Game Code, § 3960)

9 37. Petitioner realleges and incorporates by reference Paragraphs 1 through 36,
10 inclusive, of this Petition, as if fully set forth below.

11 38. Fish and Game Code section 3960 prohibits the use of dogs to pursue bear and
12 bobcat. (Fish & Game Code, § 3960.)

13 39. Fish and Game Code section 3960 requires dog owners to maintain reasonable
14 control of the animal. Section 3960 also provides the Department of Fish and Wildlife the
15 authority to (a) capture any dog not under the reasonable control of its owner or handler, when
16 that uncontrolled dog is pursuing any big game mammal, any bear or bobcat, or any fully
17 protected, rare, or endangered mammal; (b) Capture or dispatch any dog inflicting injury or
18 immediately threatening to inflict injury to any big game mammal during the closed season on
19 that mammal, and the department may capture or dispatch any dog inflicting injury or
20 immediately threatening to inflict injury on any bear or bobcat at any time, or any fully
21 protected, rare, or endangered mammal at any time; and (c) to capture or dispatch any dog
22 inflicting injury or immediately threatening to inflict injury to any mammal in a game refuge or
23 ecological reserve if hunting within that refuge or ecological reserve is unlawful.

24 40. In 2009, in response to a proposal to amend section 265 to delete the ban on GPS
25 collars and tree switches, the Commission's ISOR stated:

26 If the treeing switch were allowed, the hunter would have no need to follow the
27 dogs on foot during the chase. The hunter could just wait until the treeing switch
28 went off and walk to the tree and find the treed animal and dogs with telemetry
equipment. Without the use of a treeing switch device, the hunter is required to

1 follow the dogs on foot and be with the dogs when an animal is treed or be close
2 enough to hear the barking of the dogs to determine if an animal is treed. The use
of treeing switches on dog collars would limit the sporting aspect of fair chase.¹

3 41. The released dogs are defacto hunters and not in control of the dog owners. GPS
4 collars do not control dogs. Instead, they allow dogs and the targeted or non-targeted animals
5 being chased to range farther from the dog handler/owner. Thus, by removing the prohibition
6 on GPS equipped collars and treeing switches, the dogs will be allowed to hunt, track, chase,
7 and pursue animals outside the control of the owner/handler. In fact, one of the primary
8 purposes of the GPS equipped collar and treeing switches is to provide the dogs to travel
9 significant distances from the owner/handler, which prevents maintaining reasonable control of
10 the animal.

11 42. As the released hounds are not in the control of their owner/handler, amending
12 section 265(d) violates Fish and Game Code section 3960. Additionally, as GPS equipped
13 collars and treeing switches will provide hunters the opportunity to use such equipment while
14 hunting bear and bobcats.

15 43. Based upon each of the foregoing reasons, the Commission prejudicially abused its
16 discretion in violation of Fish and Game Code section 3960 in approving the amended
17 regulations. As such, the Court should issue a writ of mandate directing Commission to set
18 aside its decision to amend section 265(d)(1) and 265(d)(2).

19 **THIRD CAUSE OF ACTION**
20 **(Violation of the Fish and Game Code, § 3008)**

21 44. Petitioner realleges and incorporates by reference Paragraphs 1 through 43,
22 inclusive, of this Petition, as if fully set forth below.

23 45. Fish and Game Code section 3008 provides:

24 The physical control of a dog by its owner while the dog is engaged in hunting in
25 an area where the owner is otherwise authorized to hunt, shall be as required by
26 this code or regulations made pursuant thereto.
27
28

1 46. Removal of the prohibition of GPS equipped collars and treeing switches allows
2 for the use dogs in a manner that the owner will not have physical control of the dog while the
3 dog is engaged in hunting.

4 47. Based upon each of the foregoing reasons, the Commission prejudicially abused its
5 discretion in violation of Fish and Game Code section 3008 in approving the amended
6 regulations. As such, the Court should issue a writ of mandate directing Commission to set
7 aside its decision to amend section 265(d)(1) and 265(d)(2).

8 **FOURTH CAUSE OF ACTION**
9 **(Violation of the Penal Code, § 597b)**

10 48. Petitioner realleges and incorporates by reference Paragraphs 1 through 47,
11 inclusive, of this Petition, as if fully set forth below.

12 49. Penal Code section 597b makes it a misdemeanor to cause any animal, including
13 dogs, to fight with any other type of animal for the person's amusement or gain. Section 597b
14 does not contain any exemption for hunting.

15 50. By removing the prohibition on the use of GPS equipped collars and treeing
16 switches, the dogs will be out of the owner's control and be used to hunt, chase, pursue other
17 types of animals resulting in fights with target animals and non-target animals. Such
18 interaction will result in the dogs fighting with other types of animals for the owner's
19 amusement or gain.

20 51. Based upon each of the foregoing reasons, the Commission prejudicially abused its
21 discretion in violation of Penal Code section 597b in approving the amended regulations. As
22 such, the Court should issue a writ of mandate directing Commission to set aside its decision to
23 amend section 265(d)(1) and 265(d)(2).

24 **FIFTH CAUSE OF ACTION**
25 **(Violation of the Fair Chase Doctrine)**

26 52. Petitioner realleges and incorporates by reference Paragraphs 1 through 51,
27 inclusive, of this Petition, as if fully set forth below.

53. California's Fish and Game Code and the Commission's regulations governing hunting of animals in the State of California are based upon and define the rules of fair chase.

54. The record demonstrates that the use of GPS equipped collars and treeing switches violate and contradict the rules of fair chase. The use of GPS equipped collars does not constitute fair chase by the hunter, but instead it becomes dogs hunting wildlife.

55. Based upon each of the foregoing reasons, the Commission prejudicially abused its discretion in violation of Penal Code section 597b in approving the amended regulations. As such, the Court should issue a writ of mandate directing Commission to set aside its decision to amend section 265(d)(1) and 265(d)(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:

1. That this Court issue a peremptory writ of mandate ordering the Fish and Game Commission to:

(a) vacate and set aside the deletion of Title 14 California Code of Regulations, section 265(d)(1) and section 265(d)(2) on the grounds that it violates the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*

(b) vacate and set aside the deletion of Title 14 California Code of Regulations, section 265(d)(1) and section 265(d)(2) on the grounds that it violates the Fish and Game Code section 3960;

(c) vacate and set aside the deletion of Title 14 California Code of Regulations, section 265(d)(1) and section 265(d)(2) on the grounds that it violates the Fish and Game Code section 3008;

(d) vacate and set aside the deletion of Title 14 California Code of Regulations, section 265(d)(1) and section 265(d)(2) on the grounds that it violates the Penal Code section 597b;


(e) vacate and set aside the deletion of Title 14 California Code of Regulations, section 265(d)(1) and section 265(d)(2) on the grounds that it violates the principles of fair chase;

- 1 (f) withdraw the Notice of Determination for the Project;
2 2. For Petitioner's costs associated with this action;
3 3. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure
4 section 1021.5; and
5 4. For such other and further relief as the Court may deem just and proper.
6

7 Dated: May 16, 2016

Respectfully submitted,

8 LAW OFFICES OF DONALD B. MOONEY

9
10 By 
11 Donald B. Mooney
12 Attorneys for Petitioner
13 Public Interest Coalition
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VERIFICATION

I am the attorney for Public Interest Coalition who are located outside the County of Yolo, State of California, where I have my office. For that reason, I make this verification for and on their behalf pursuant to the California Code of Civil Procedure section 446. I have read the foregoing Verified Petition for Writ of Mandate and know its contents. The matters stated in this Verified Petition for Writ of Mandate are true of my own knowledge except those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the above is true and correct. Executed this 16th day of May 2016, at Davis, California.

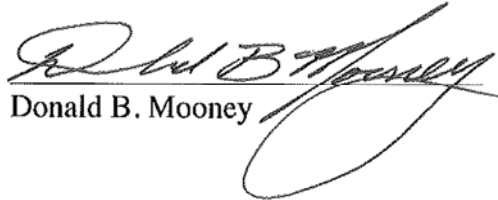

Donald B. Mooney

EXHIBIT A

EXHIBIT A

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

129 C Street, Suite 2
Davis, California 95616
Telephone (530) 758-2377
Facsimile (530) 758-7169
dbmooney@dcn.org

May 16, 2016

*VIA FACSIMILE 916.653.5040
AND ELECTRONIC MAIL
fgc@fgc.ca.gov*


Michael Yaun
Acting Executive Director
California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

Re: NOTICE OF INTENT TO FILE CEQA PETITION

Dear Mr. Yaun:

Please take notice, under Public Resources Code section 21167.5, that Public Interest Coalition intends to file a Petition for Writ of Mandate in Sacramento County Superior Court under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.* against the California Fish and Game Commission. The Petition for Writ of Mandate will challenge the approval of the Commission's modification/deletion of Title 14, California Code of Regulations sections 265(d)(1) and 265(d)(2). The Petition for Writ of Mandate will request that the court direct the Commission to vacate and rescind all approvals and direct the Commission to comply with CEQA and the Commission's Certified Regulatory Program. Additionally, the Petition will seek Petitioner's costs and attorney's fees associated with this action.

Very truly yours,


Donald B. Mooney
Attorney for Petitioner
Public Interest Coalition

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 129 C Street, Suite 2 Davis, California; I am over the age of 18 years and not a party to the foregoing action. On May 16, 2016, I served a true and correct copy of as follows:

Notice of Intent to File CEQA Petition – Public Resources Code section 21167.5

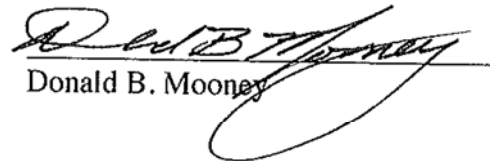
X (by electronic mail) to the person at the address set forth below:

X (by overnight delivery service) via Federal Express to the person at the address set forth below:

X (by facsimile transmission) and via Federal Express to the person at the address and phone number set forth below:

Michael Yaun
Acting Executive Director
California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814
FAX: 916.653.5040
fgc@fgc.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed May 16, 2016, at Davis, California.


Donald B. Mooney

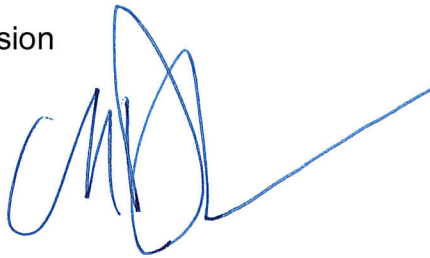
2017 NOV 27 AM 11:00

Memorandum

Date: November 20, 2017

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **CEQA Documents: Section 265, Use of Dogs to Take/Pursue Game, Title 14, California Code of Regulations**

In compliance with the California Environmental Quality Act, the Department of Fish and Wildlife (Department) has prepared, on behalf of the Fish and Game Commission (Commission), the enclosed Notice of Exemption (NOE). The NOE evaluates regulations banning the use of Global Positioning System Equipment and Tree-Switches for the pursuit/take of mammals in Section 265, T14, CCR.

If you have any questions or need additional information, please contact Kari Lewis at 916-445-3789 or Kari.Lewis@wildlife.ca.gov.

Attachments

cc: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

Kari Lewis, Chief
Wildlife Branch
Kari.Lewis@wildlife.ca.gov

Scott Barrow, Acting Manager
Regulations Unit
Wildlife and Fisheries Division
Craig.Martz@wildlife.ca.gov

Mike Randall, Analyst
Regulations Unit
Wildlife and Fisheries Division
Mike.Randall@wildlife.ca.gov

Notice of Exemption**Appendix E**

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

(Address)

Project Title: Amend Section 265 Title 14, California Code of Regulations (CCR)

Project Applicant: N/A

Project Location - Specific:
statewide

Project Location - City: N/A Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

This action would delete the prohibition on the use of treeing switches on hunting dogs, which is no longer necessary as no hunting activities currently allowed would include the need for treeing switches. Additionally, this action would delete the prohibition on the use of GPS-collars for hunting dogs.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Cal. Code Regs., tit. 14, § 15061(b)(3)
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:
see attached

Lead Agency

Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: Executive Director

☐ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



December 6, 2017

ATTACHMENT TO NOTICE OF EXEMPTION
Amendments to Section 265, Title 14, California Code of Regulations

The California Fish and Game Commission (Commission) has taken final action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the project mentioned on December 6, 2017. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the CEQA exemption for projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).)

Common Sense Exemption for Projects With No Possibility of Significant Effect on the Environment


In adopting the amendments to section 265 of Title 14 of the California Code of Regulations, the Commission relied for the purposes of CEQA on the common sense exemption. (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).) This exemption deals with projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This amendment to regulation removes outdated prohibitions on treeing switches and GPS collars that are not anticipated to affect current levels of hunting effort for species that can legally be pursued with dogs. Because current hunting effort will continue at the same level and therefore there is no possibility that the activity will have a significant effect on the environment, the Commission adoption of this amendment to regulations is an activity that is the proper subject of the CEQA's common sense exemption.

State of California
Department of Fish and Wildlife

Memorandum

Date: November 20, 2017

To: Valerie Termini, Executive Director
Fish and Game Commission

From: Kari Lewis 
Wildlife Branch Chief
Department of Fish and Wildlife

Subject: **Amendments to Section 265, Title 14, California Code of Regulations CEQA Overview**

In order to remove obsolete provisions and allow for use of technological advancements related to hunting dogs, the Fish and Game Commission's (Commission) Wildlife Resources Committee (WRC) in 2015 recommended removing language in section 265 of Title 14 of the California Code of Regulations (§265(d)). This section prohibited the use of treeing switches and GPS collars on dogs for the pursuit of mammals beginning in 1994. However, regulatory changes, including legislative actions, since the 1990s appeared to have rendered the prohibitions contained in § 265(d) largely unnecessary.

The purpose of this memo is to describe staff's analysis of use of the common sense exemption (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3)) under the California Environmental Quality Act (CEQA) as it relates to this regulatory action.

Common Sense Exemption for Projects with No Possibility of Significant Effect on the Environment

Prior to the prohibition being put in place in 1994 and at all times since, dogs were allowed under Commission regulations as an aid to hunting various species. The amendment does not change the instances in which dogs are allowed as an aid in hunting or when dog training can occur.

The types of mammals which dogs can be used to pursue are not species that require the use of treeing switches because they are not treed. Additionally, the use of GPS collars on dogs pursuing deer and/or pigs (the only mammal species for which dogs are currently allowed) would allow the hunter to find and locate crippled game more efficiently, would allow the hunter to locate lost dogs, and would allow enforcement to track hunter trespass in a manner not currently available to them. Currently, radio-

telemetry collars are used by hunters to track their dogs.

There is no evidence to show that there is any impact to the number of hunters, the number of hunting dogs, or the total hunting effort that would occur from either permitting or prohibiting the use of GPS collars or treeing switches on hunting dogs. Although hunters who use dogs may have a higher success rate than hunters without dogs, and the use of dogs may cause game to experience more stress, there have been no evidence of significant effects on fertilization, reproduction, or survival rates of the game species. Radio telemetry collars have never been prohibited by regulation in California, are available for use by hunters, and are used in the field to track dogs in the field. The addition of GPS technology would not substantially modify the behavior in hunters allowing dogs to track game off leash. Furthermore, because hunters who are likely to use GPS collars are likely using radio-telemetry collars, there is not likely to be a significant increase in hunter success. Lastly, there is no evidence suggesting any additional impacts would occur to non-target species from authorizing the use of GPS collars on dogs.

Additionally, based on input from hunters, the use of GPS equipped collars on hunting dogs would provide multiple benefits. The prohibition on the use of GPS collars increases the possibility that downed game may be lost to the hunter, creating waste. Lifting that prohibition would allow wounded animals to be more easily located with collared dogs, thus reducing the level of waste of hunter shot deer and wild pigs. GPS collars would also aid in the retrieval of lost dogs.

The Commission adopted an amendment to Section 265 in April of 2016 that allowed the use of GPS collars and treeing switches; that amendment was subsequently superseded. However, that regulation took effect July 27, 2016 and was the governing law during the following fall, winter, and spring. There is no indication of an increase in hunting activity using dogs during that time with the allowance of the additional technology.

In staff's view, because there is no possibility that these regulations could have a significant effect on the environment, the Commission's adoption of these regulations is an activity that is the proper subject of the common sense exemption under CEQA. (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).)