

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

Amend Section 354
Title 14, California Code of Regulations
Re: Archery Equipment and Crossbow Regulations

I. Date of Initial Statement of Reasons: November 15, 2018

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing: Date: December 12-13, 2018
 Location: Oceanside, CA

(b) Discussion Hearing: Date: February 6-7, 2019
 Location: Sacramento, CA

(c) Adoption Hearing: Date: April 17-18, 2019
 Location: Santa Monica, CA

III. Description of Regulatory Action

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

The California Department of Fish and Wildlife (Department) proposes two amendments to Section 354, which are related to law enforcement:

First, the provision in subsection 354(f) requires that a bow “cast a legal hunting arrow ... 130 yards”, however this is unenforceable since it is impossible to demonstrate inside a courtroom. There is a need for clarification of the regulation to require that archery equipment be strong enough to project an arrow at a rate that it will be lethal to the game mammal and also be enforceable. For clarity, the Department proposes requiring a bow draw weight of at least 40 pounds and crossbow draw weight of at least 125 pounds to make it practical to demonstrate in the field and in a courtroom. Draw weight as used in archery sports is the measure of force required to draw the bow to a ready-to-fire position.

Second, the provision in subsection 354(h) states that “archers may not possess a firearm while hunting in the field during any archery season, or while hunting during a general season under the provisions of an archery only tag.” The subsection also provides an exception, by reference to Fish and Game Code (FGC) 4370, which permits peace officers to carry a concealed firearm. The Department proposes an amendment allowing possession of a concealable firearm while hunting big game other than deer under the authority of an archery only tag, provided the hunter does not use that firearm in any way to take the game animal. Regarding deer hunting, Fish and Game Code section 4370(a)

provides that, except for peace officers identified in Fish and Game Code section 4370(b), “a person taking or attempting to take deer during such archery season shall neither carry, nor have under his or her immediate control, any firearm of any kind.” Thus, to comply with Fish and Game Code section 4370, the proposed regulation change to allow possession of a concealed firearm while archery hunting extends to hunting big game other than deer.

Bow Draw Weight

Ethical bow hunting requires that a bow to be strong enough to project an arrow at a rate that it will inflict the maximum damage to the game mammal in the interest of killing it quickly to minimize suffering of that animal. As currently provided in subsection 354(f), a bow that can cast an arrow at least 130 yards is an example of a bow that is ethical to use because it generates enough force to quickly kill the game animal. However, demonstrating that a bow hunter may be using a bow suspected of being less than capable of casting an arrow 130 yards is impractical for both the archer and law enforcement. Testing in the field is difficult, and demonstrating the bow’s strength in a courtroom is impractical.

The regulation change would serve to clarify the regulation for hunters and to simplify law enforcement efforts by Wildlife Officers. Research has been done by other state wildlife management agencies to determine a draw weight that generates enough force to quickly kill the game animal. The proposed amendment identifies a minimum draw weight, similar to what regulations in other western states require (see table, below).

Table: Minimum Draw Weight (lbs.)

| <u>State</u> | <u>Bow</u> | <u>Crossbow</u> |
|--------------|------------|-----------------|
| Washington | 40 | 125 |
| Idaho | 40 | 150 |
| Nevada | 40 | 125 |
| Arizona | 30 | 125 |

The recommended minimum draw weight of 40 pounds for bows and 125 pounds for crossbows is sufficient to meet the ethical standard.

The widely accepted method of measuring a bow’s draw weight has been to use a device called a bowscale. A bowscale is very similar to a simple scale commonly used to measure the weight of suitcases. They are inexpensive and widely available for the hunter to use to assure the bow is in compliance with regulation. A wildlife officer can easily use a bowscale in the field for a compliance check or to demonstrate draw weight in a courtroom. In practical application, archers can have their equipment checked in a retail hunting store (usually without cost); bow hunters can acquire equipment that is

preset at a certain bow weight (included in the purchase); or the hunter can acquire a bow scale at a cost of \$10-20.

Concealable Firearms

Subsection 354(h), prohibits archers (bowhunters) from possession of a firearm while hunting under the authority of an archery only tag. An exception is made in Section 4370, Fish and Game Code, which authorizes possession of a concealable firearm by active or honorably retired peace officers. The proposed amendment would expand authorization to possess a concealable firearm to anyone, not just peace officers, and to comply with FGC Section 4370, would apply while hunting big game other than deer. The change would continue to prohibit possession of non-concealable firearms and use of the firearm for purposes of take.

Archery hunters are granted authority to hunt with an archery only tag prior to the general season in most places where hunting is authorized. The early season generally provides them an advantage over firearm hunters with respect to the fact there are fewer hunters, less firearms reports (noise) from areas where hunting is common, and less pressure on the game animal - deer in particular. Because of this advantage, the legislature passed FGC 4370 to authorize archery hunting while preventing illegal take of a deer via a firearm by providing an explicit prohibition for possession of a firearm while engaged in hunting with an archery only tag. Section 354(h) contains similar language prohibiting possession of a firearm with an archery only tag.

Since the original authorization of archery only hunting and the subsequent prohibition on possession of a firearm, the primary argument against the prohibition of possession of a firearm while archery hunting was for personal safety from potentially dangerous animals. The two primary animals described as possibly posing a threat are bears and mountain lions. Going back decades, there are very few examples of incidents where bowhunters have needed to protect themselves from dangerous animals in California's wild. But recently two examples exemplified a change in that pattern.

In the summer of 2018, there were two incidents involving archery hunters who were threatened by dangerous animals. One man shot a bear with an arrow and went to retrieve it. When he found the injured bear it attacked and severely mauled him. Wildlife officers discovered evidence to suggest he managed to get a shot off with another arrow at the attacking bear and it glanced off the bear's face. The bear ultimately died from its injuries and the man spent several days in the hospital recovering from the mauling. Another archery hunter was approached by a mountain lion coming directly at him. The man reported shouting at the mountain lion as scare tactic to no avail. The bowhunter exercised extraordinary poise considering the threat coming at him and managed draw an arrow and shoot it through the lion's eye socket – killing the mountain lion. He appropriately reported the incident to the Department. That extraordinarily accurate shot is not normal. The average bowhunter may have been off by a fraction of an inch and caused a glancing blow, and an unpredictable reaction from the lion.

An additional threat to bowhunters, and all hunters, has emerged over the last twenty years. The Department has seen a significant increase in the presence of members of international drug trafficking organizations who illegally cultivate marijuana on rural public and private lands. Thousands of such sites exist on the landscape. These illicit growers are usually well armed and are treated as potentially violent by law enforcement. Wildlife officers and members of allied agencies who work in the area of illegal marijuana cultivation enforcement have been forced into officer involved shootings at least once every year for many years while conducting illicit marijuana cultivation enforcement activities. Most illicit marijuana cultivation occurs off the trails and is on locations very difficult to reach by normal hikers and outdoor enthusiasts. However, hunters go places where many others do not venture and have an increased probability of contacting these potentially dangerous people.

The Department recommends an amendment to authorize archery hunters who wish to carry a concealable firearm, except while deer hunting.

(b) Goals and Benefits of the Regulation:

Section 354(f), Title 14, CCR is unenforceable and there is no way to apply the section in a courtroom to demonstrate a violation. As a result, the Department has no record of the citation ever being written in a database search of tens of thousands of citations written since September 2013. Amendments to require a minimum draw weight will make the regulation enforceable. It will benefit the hunting public and wildlife officers alike who would have an inexpensive, readily available means to measure draw weights of bows and crossbows to stay in compliance with the regulation. It would continue to ensure bowhunters and crossbow hunters are using equipment to maximize the chance of a humane kill.

Section 354(h), Title 14, CCR prohibits possession of a firearm while hunting with an archery only tag. With recent examples of a wildlife attack on an archery hunter and one narrowly avoided presumed attack, in addition to the ongoing threat posed by members of drug trafficking organizations, it is reasonable to amend the prohibition so that archery hunters may possess a concealable firearm while hunting big game other than deer (consistent with Fish and Game Code section 4370) so long as they do not use that firearm to take their game.

(c) Authority and Reference

Authority: Sections 200, 203, 240, and 265, Fish and Game Code.

Reference: Sections 200, 203, 203.1, 265, 2005, and 4370, Fish and Game Code, Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and Section 25455, Penal Code.

(d) Specific Technology or Equipment Required by Regulatory Change:

The proposed amendment to subsection 354(f) does not impose any requirement to purchase any specific equipment. For law enforcement purposes, the regulation

change would require the use of an inexpensive weight measuring device called a bowscale. The cost of this handheld device ranges between \$10 and \$20 based upon a survey of costs of spring or electronic scale devices commonly used for measuring suitcase weight and others marketed especially for bowhunters. Archery hunters usually set their bows at well above the minimum of what would be required by the proposed regulation. Usually, when a bowhunter purchases a bow for the first time, he or she has it strung with a bowstring, purchases arrows that are cut and matched with the bow and has the draw weight set. Archery hunters can have the draw weight checked for free at most stores that carry archery equipment or they can share a device.

(e) Identification of Reports or Documents Supporting Regulation Change:

The California Bowmen Hunters provided a report of all current archery hunting regulations from nine western states for comparison and as a basis for California to adopt similar regulations.

A formal regulation change petition was submitted to the Fish and Game Commission which was accepted and assigned the Tracking number 2017-001. The petition was submitted by Sean Brady as a representative of the National Rifle Association and the California Rifle and Pistol Association.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication:

Public discussion at the September 20, 2018, Wildlife Resources Committee of the Fish and Game Commission for the archery draw weight proposal generated no opposition to change the way bow draw weight is measured. Possession of a concealable firearm while archery hunting was not vetted at a public meeting.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change: None considered.

(b) No Change Alternative:

If the amendments are not adopted the regulations will remain the same.

V. Mitigation Measures Required by Regulatory Action

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

VI. Impact of Regulatory Action

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed amendment would not directly or indirectly impose any regulation on businesses.

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

The Commission anticipates no impacts on the creation or elimination of jobs within the state and no impact on the creation of new businesses or the elimination of existing businesses because the proposed amendment would not directly or indirectly impose any regulation on businesses. The Commission anticipates benefits to the health and welfare of California residents because the proposed amendment would enable the carrying of a firearm, while hunting big game other than deer (consistent with Fish and Game Code section 4370), in the event a person is threatened by a dangerous animal or person while archery hunting. The Commission does not anticipate impacts on worker safety. The Commission anticipates benefits to the State's environment by reducing non-lethal injuries to wildlife.

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

The vast majority of hunters use bows that are set to a much higher draw weight than the proposed minimum set by the proposed regulation, so it would not affect them. A small percentage of hunters would choose to purchase a scale to measure their bow's draw weight to be sure they are in compliance with the law at a cost of about \$10 - \$20 each.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulation would save many hours of investigative costs associated with a wildlife officer's attempt to prove a seized bow had insufficient strength to cast an arrow at least 130 yards. Time would be spent seizing the bow as evidence and documenting its seizure, finding a safe place to test the bow's ability to cast an arrow 130 yards, finding the arrow and measuring its flight distance once it is tested, then possibly returning the bow to the hunter at the direction of the court. Minimal hard costs to the Department would be associated with the proposed regulation change. California's wildlife officers who regularly work archery seasons may have

to purchase bow measuring devices. It is estimated that approximately a quarter of the state's wildlife officers, or about 100 would have to purchase them at a total one-time cost to the state of \$1,000 - \$2,000.

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

VII. Economic Impact Assessment

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state because the proposed action would not directly affect businesses or the demand for labor.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission does not anticipate any effects of the proposed regulation on the creation of new businesses or the elimination of existing businesses within the state because it would not affect the demand for business products or services.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate any effects of the proposed regulation on the expansion of businesses currently doing business within the state because the proposed action would not affect the demand for business products or services.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission anticipates benefits of the regulation to the health and welfare of California residents because the proposed amendment would enable the carrying of a firearm for personal protection while archery hunting while hunting big game other than deer (consistent with Fish and Game Code section 4370).

- (e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate benefits to worker safety because the proposed amendment would not impact working conditions.

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's environment by reducing non-lethal injuries to wildlife.

(g) Other Benefits of the Regulation: None.

Informative Digest/Policy Statement Overview

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Non-monetary Benefits to the Public

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

Consistency and Compatibility with Existing Regulations

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to Section 354 are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate hunting regulations.