

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

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

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

II. Dates and Locations of Scheduled Hearings:

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

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

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

III. Description of Regulatory Action:

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

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

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

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

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

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

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

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

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

METHODS FOR POPULATION ESTIMATION:

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

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

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

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

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

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

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

PROPOSED REGULATIONS:

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

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

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

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

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

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

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

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No Alternatives were identified.

- (b) No Change Alternative:

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

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

- (c) Alternatives considered but rejected:

No Alternatives were identified

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

V. Mitigation Measures Required by Regulatory Action:

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

VI. Impact of Regulatory Action:

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

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

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

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

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

The Commission anticipates benefits to the health and welfare of California residents. The proposed regulations are intended to provide continued recreational opportunity to the public. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources.

The Commission anticipates benefits to the environment by the sustainable management of California's upland game resources. The fees that hunters pay for licenses and stamps are used for conservation.

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

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

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

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

VII. Economic Impact Assessment:

The following amendments to the regulations are proposed:

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

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

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

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

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

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

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

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

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

(e) Benefits of the regulations to worker safety.

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

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

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

(g) Other Benefits of the Regulations:

None

Informative Digest/Policy Statement Overview

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

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

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

Benefits of the Proposed Regulations

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

Non-monetary Benefits to the Public

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

Consistency and Compatibility with Existing Regulations

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