

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 203, 205, 265, 331, 332, 355, 710, 710.5, 710.7, 713, 1050, 1055, 1055.1, 1530, 1570, 1571, 1572, 1573, 1583, 1587, 1745, 1764, 1765, 3003.1, 3004.5, 3031, 3039, 3950, 3951, 4001, 4004, 4150, 4302, 4330, 4331, 4332, 4333, 4336, 4340, 4341, 4652, 4653, 4655, 4657, 4750, 4751, 4752, 4753, 4754, 4755, 4902, 10500, 10502 and 10504, Fish and Game Code, and to implement, interpret or make specific sections 355, 711, 713, 1050, 1055.3, 1301, 1526, 1528, 1530, 1570, 1571, 1572, 1580, 1581, 1582, 1583, 1584, 1585, 1745, 1761, 1764, 1765, 1907, 2006, 5003, 5010, 10504, Fish and Game Code and Sections 25455, 26150 and 26155, Penal Code; proposes to amend sections 550, 550.5, 551, 552, 630 and 702; Title 14, California Code of Regulations, relating to wildlife areas, public lands and ecological reserves.

Informative Digest/Policy Statement Overview

The Department proposes to designate recently acquired lands; one as a wildlife area pursuant to Fish and Game Code sections 1525 and 1526; and seven (7) as ecological reserves pursuant to Fish and Game Code Section 1580. Four properties which the Department no longer possesses or manages will be removed from the regulations.

The purposes of wildlife areas are to conserve wildlife and their associated habitats, while allowing for compatible recreation. The main uses of wildlife areas include hunting, fishing, wildlife viewing, photography, environmental education and research. The purposes of ecological reserves are to conserve threatened or endangered plants and/or animals, and/or specialized habitat types, provide opportunities for the public to observe native plants and wildlife, and provide opportunities for environmental research. Recreation on ecological reserves must be compatible with the conservation of the property's biological resources.

The general public's use of Department lands is governed by regulations:

- Section 550 contains regulations that pertain to all Department lands.
- Section 550.5 contains more detailed regulations about reservations, passes, and permits used on Department lands.
- Section 551 pertains to wildlife areas only.
- Section 552 pertains to nine (9) National Wildlife Refuges where the Department manages hunting programs.
- Section 630 pertains to the Department's ecological reserves.
- Section 702 pertains to fees and forms.

If approved, these proposed regulation changes would:

Designate seven ecological reserves in subsection 630(b) and one wildlife area in subsection 551(b).

Remove one ecological reserve and three wildlife areas from, respectively, subsections 630(b) and 551(b).

Make site-specific regulation changes for certain properties to improve public safety, increase compatible recreational opportunities on certain properties, prohibit general public access on certain properties, provide natural resource protection and manage staff resources for the conservation and recreational purposes of these properties.

Improve consistency between federal regulations and the state regulations in Section 552 for nine Federal refuges on which the Department manages hunting programs and remove text that is duplicative or otherwise unnecessary in this section. These refuges are also listed as state wildlife areas in subsection 551(c).

Update information in the "Permit Application For Special Use of Department Lands" (DFW 730 (New 01/14)) which is incorporated by reference in Subsection 702(d)(1) and associated subsections of 702 to improve their clarity and consistency.

Editorial changes are also proposed to improve the clarity and consistency of the regulations and to streamline the regulations by removing unnecessary text.

Goals and Benefits of the Regulation:

The increase in compatible recreational opportunities will benefit businesses that provide recreational equipment, and supplies, and local businesses that sell food or other goods to people who recreate on Department lands.

Non-monetary benefits to the public

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, 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 with State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the uses of Department lands (Sections 1526 and 1580, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to the designation and compatible uses of Department lands.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Friday, February 21, 2020, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Thursday, April 16, 2020, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before noon April 10, 2020 at the address

given below, or by email to FGC@fgc.ca.gov. All comments (both oral and written) must be received no later than April 16, 2020, at the hearing in Sacramento, California. If you would like copies of any modifications to this proposal, please include your name and mailing address. **Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090.**

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, P.O. Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Sheri Tiemann at the preceding address or phone number. **Julie Horenstein, Lands Program, has been designated to respond to questions on the substance of the proposed regulations. She can be reached at (916) 324-3772 or via email at Julie.Horenstein@wildlife.ca.gov.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of **Regulatory** Action/Results of the Economic Impact Assessment

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 significant statewide adverse economic impacts directly affecting business, including the ability of California businesses to compete with businesses in

other states because the regulatory actions affect undeveloped land and are not anticipated to have any net impact on recreational uses.

(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 proposed action will not impact 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 because the regulatory actions affect undeveloped land and are not anticipated to have any net impact on recreational uses. No benefits to worker safety are anticipated because this regulatory action will not impact working conditions. The proposed site-specific regulation changes for certain properties are expected to benefit the health and welfare of California residents by increasing public safety and recreational opportunities and benefit the environment by improving resource protection and the management of staff resources.

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

The agency 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:

The California Department of Fish and Wildlife (Department) may experience a small increase in draw application fees for additional special hunts that have been proposed, as well as a small decrease in one-day or two-day hunting passes because some pheasant hunts are proposed to be no longer permitted in certain Type A wildlife area lands. The net revenue change is estimated to be **\$149.52** per budget year.

The proposed changes are to designate seven ecological reserves and one wildlife area. Through designating these properties, four will offer at least occasional public use opportunities, such as special hunts and educational activities. Three will generally be open to authorized public uses.

The proposed regulation changes would increase special hunt opportunities offered to a limited number of participants via a random drawing. These hunts are often offered to a category of hunters that would particularly benefit from the more controlled circumstances of a special hunt, such as youth or disabled hunters.

Most of the proposed special hunt opportunities would be for upland game. One would be for tule elk. The anticipated number of applicants for each new special hunts and potential new revenue is shown in Table 1. The draw application fee for an upland game special hunt is \$2.42, and the application fee for tule elk is \$8.13. The estimated new revenue for the proposed upland game bird and tule elk special hunts is estimated to be as much as **\$653.40**.

Some proposed changes would decrease public use opportunities such as the elimination of early season pheasant hunting days on seven Central Valley Type A wildlife areas. Regular

shoot days for the Type A wildlife areas during the waterfowl hunting season (basically September through January) are Saturday, Sunday, and Wednesday. No hunting occurs outside of those days for waterfowl or any other species, except for the possibility that pheasant could be permitted. In the current regulations (subsections within 551(s)) there are exceptions to the regular shoot days on seven Type A wildlife areas. Depending on the property, five to twelve consecutive days of pheasant hunting are allowed at the beginning of the six-week pheasant season which begins in early November.

However, starting approximately nine years ago, because of the steep decline in the wild pheasant population, the Department has annually issued a press release that excluded nearly all those extra pheasant hunt days. The Department had to exercise its authority to restrict or close a public use for conservation purposes. Only one extra day was retained on two properties via the press releases: the first Monday of pheasant season on Gray Lodge and Upper Butte Basin. In practice, this one day on two areas have been the only extra opportunity available, regardless of the current language in Section 551(s). So functionally, the proposed regulatory change would be a very small change from the current practices over the last nine years.

In order to hunt on a Type A wildlife area, people must purchase a hunting pass. One-day, two-day, and season-long hunting passes are sold through the Department's online license sales program. The current fee for a one-day Type A hunting pass is \$21.42. The current fee for a two-day hunting pass is \$36.21.

The hunter participation on "pheasant Mondays" in recent years at Gray Lodge and Upper Butte Basin has been very low compared to regular weekend shoot days. The Department estimates that five one-day passes are sold for each property for the first Monday, and four two-day passes are sold for each property for hunting on Sunday and Monday. If this day is no longer available for upland game hunting on those two properties, this could result in a total loss of **\$503.88** in hunting pass sales.

The Department estimates that removing this one-day from two properties will not affect the sale of season-long hunting passes, hunting licenses or upland game stamps.

In sum, the proposed rulemaking could result in \$653.40 in new revenue to the Department along with a reduction in revenue estimated to be about \$503.88, resulting in a \$149.52 net revenue change for the Department that is absorbable within existing budgets and resources.

- (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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

David Thesell

Dated: January 14, 2020

Program Manager

FISH AND GAME COMMISSION