

# California Fish and Game Commission Meeting Binder



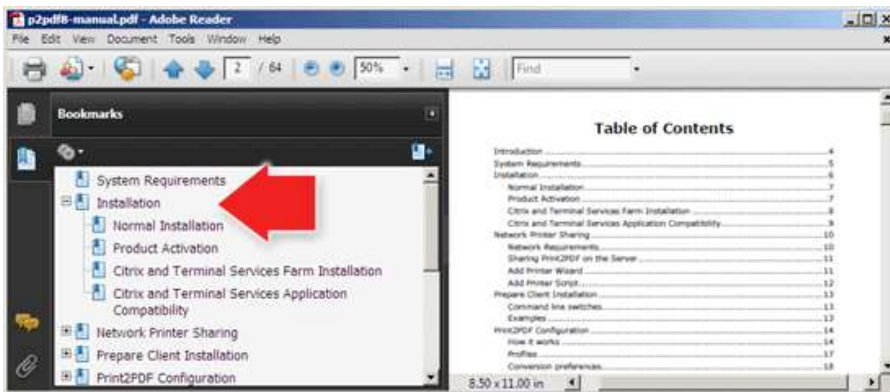
**January 12, 2021**  
**Webinar/Teleconference**


## **EASY GUIDE TO USING THE BINDER**

1. Download and open the binder document using your Adobe Acrobat program/app.
2. If a bookmark panel does not automatically appear on either the top or left side of the screen, click/tap on the “bookmark symbol” located near the top left-hand corner.



3. To make adjustments to the view, use the Page Display option in the View tab. You should see something like:



4. We suggest leaving open the bookmark panel to help you move efficiently among the staff summaries and numerous supporting documents in the binder. It’s helpful to think of these bookmarks as a table of contents that allows you to go to specific points in the binder without having to scroll through hundreds of pages.
5. You can resize the two panels by placing your cursor in the dark, vertical line  located between the panels and using a long click /tap to move in either direction.
6. You may also adjust the sizing of the documents by adjusting the sizing preferences located on the Page Display icons found in the top toolbar or in the View tab.
7. Upon locating a staff summary for an agenda item, notice that you can obtain more information by clicking/tapping on any item underlined in blue.
8. Return to the staff summary by simply clicking/tapping on the item in the bookmark panel.
9. Do not hesitate to contact staff if you have any questions or would like assistance.

## OVERVIEW OF FISH AND GAME COMMISSION TELECONFERENCE MEETING

- This year marks the beginning of the 150<sup>th</sup> year of operation of the California Fish and Game Commission in partnership with the California Department of Fish and Wildlife. Our goal is the preservation of our heritage and conservation of our natural resources through informed decision making. These meetings are vital in achieving that goal. In that spirit, we provide the following information to be as effective and efficient toward that end. Welcome and please let us know if you have any questions.
- We are operating under the Bagley-Keene Open Meeting Act and these proceedings are being recorded and broadcast.
- In the unlikely event of an emergency, please note the location of the nearest emergency exits at your location.
- Items may be heard in any order pursuant to the determination of the presiding commissioner.
- The amount of time for each agenda item may be adjusted based on time available and the number of speakers.
- We will ask how many speakers we have before taking public comment; please be prepared and listen closely for your name or phone number to be called.
- When you speak, please state your name and any affiliation. Please be respectful. Disruptions from the audience will not be tolerated. Time is precious so please be concise.
- To receive meeting agendas and regulatory notices about those subjects of interest to you, please visit the Commission's website, [www.fgc.ca.gov](http://www.fgc.ca.gov), and sign up for our electronic mailing lists.
- All petitions for regulation change must be submitted in writing on the authorized petition form, FGC 1, Petition to the California Fish and Game Commission for Regulation Change, available on the Commission's website.
- **Reminder!** Please silence your mobile devices and computers to avoid interruptions.

# INTRODUCTIONS FOR FISH AND GAME COMMISSION MEETINGS

## **Fish and Game Commission**

Eric Sklar	President (Saint Helena)
Samantha Murray	Vice President (Del Mar)
Jacque Hostler-Carmesin	Member (McKinleyville)
Peter Silva	Member (Jamul)
Vacant	Member

## **Commission Staff**

Melissa Miller-Henson	Executive Director
Rachel Ballanti	Deputy Executive Director
Mike Yaun	Legal Counsel
Susan Ashcraft	Marine Advisor
Ari Cornman	Wildlife Advisor
Sherrie Fonbuena	Analyst
Cynthia McKeith	Analyst

## **California Department of Fish and Wildlife**

Chuck Bonham	Director
Wendy Bogdan	General Counsel
David Bess	Deputy Director and Chief, Law Enforcement Division
Stafford Lehr	Deputy Director, Wildlife and Fisheries Division
Clark Blanchard	Deputy Director, Office of Legislation and External Affairs
Scott Gardner	Chief, Wildlife Branch
Kevin Shaffer	Chief, Fisheries Branch
Craig Shuman	Manager, Marine Region

I would also like to acknowledge special guests who are present:  
*(i.e., elected officials, including tribal chairpersons, and other special guests)*

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**Commissioners**  
**Eric Sklar**, President  
Saint Helena

**Samantha Murray**, Vice President  
Del Mar

**Jacque Hostler-Carmesin**, Member  
McKinleyville

**Peter S. Silva**, Member  
Jamul

**Vacant**, Member

STATE OF CALIFORNIA  
Gavin Newsom, Governor

## Fish and Game Commission



*Celebrating 150 Years of  
Wildlife Heritage and Conservation!*

**Melissa Miller-Henson**  
**Executive Director**  
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(916) 653-4899  
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### MEETING AGENDA January 12, 2021, 9:00 AM

#### Webinar and Teleconference

The California Fish and Game Commission is conducting this meeting by webinar and teleconference to avoid a public gathering and protect public health during the COVID-19 pandemic, consistent with Executive Order N-33-20.

Pursuant to Executive Order N-29-20, commissioners may participate in meetings remotely. The public may provide public comment during the public comment periods, and otherwise observe remotely consistent with the Bagley-Keene Open Meeting Act.

***The meeting will be live streamed; visit [www.fgc.ca.gov](http://www.fgc.ca.gov) the day of the meeting to watch or listen to the meeting. To provide public comment during the meeting, please join via Zoom Webinar or by telephone. [Click here](#) for instructions on how to join the meeting.***

**Note: See important meeting deadlines and procedures, including written public comment deadlines, beginning on page 6.**

Call to order/roll call to establish quorum

#### 1. Consider approving agenda and order of items

#### 2. General public comment for items not on agenda

Receive public comment regarding topics within the Commission's authority that are not included on the agenda.

Note: The Commission may not discuss or take action on any matter raised during this item, except to decide whether to place the matter on the agenda of a future meeting (sections 11125 and 11125.7(a), Government Code).

#### 3. Mammal hunting regulations

Discuss amending hunting regulations for deer and antelope hunting quotas and seasons, and regulations for elk, antelope, and bighorn sheep tags.  
(Amend sections 360 and 363, and add Section 708.19, Title 14, CCR)

#### **4. Bumble Bees**

In response to a writ of mandate from the Sacramento Superior Court, consider rescinding the decision made at the June 12, 2019 Commission meeting acting on the petition, Department's evaluation report, and comments received to determine whether listing Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as endangered or threatened species under the California Endangered Species Act may be warranted.

(Pursuant to sections 2074 and 2074.2, Fish and Game Code; Case No: 34-2019-80003216-CU-WM-GDS)

Adjourn

## **EXECUTIVE SESSION**

(Not Open to Public)

At a convenient time during the regular agenda of the meeting listed above, the Commission will recess from the public portion of the agenda and conduct a closed session on the agenda items below. The Commission is authorized to discuss these matters in a closed session pursuant to Government Code Section 11126, subdivisions (a)(1), (c)(3), and (e)(1), and Fish and Game Code Section 309. After closed session, the Commission will reconvene in public session, which may include announcements about actions taken during closed session.

- (A) Pending litigation to which the Commission is a Party
  - I. Dennis Sturgell v. California Department of Fish and Wildlife, and California Fish and Game Commission (revocation of Dungeness crab vessel permit No. CT0544-T1)
  - II. Aaron Lance Newman v. California Fish and Game Commission (revocation of hunting and sport fishing privileges)
  - III. Almond Alliance of California et al. v. California Fish and Game Commission and California Department of Fish and Wildlife (bumble bees California Endangered Species Act determination)
  - IV. The Ballona Wetlands Land Trust v California Fish and Game Commission (Ballona Wetlands Ecological Reserve petition for regulation change)
  - V. California Construction and Industrial Materials Association et al. v. California Fish and Game Commission (western Joshua tree California Endangered Species Act determination)
  - VI. Albert Thomas Paulek v. California Fish and Game Commission (CEQA determination regarding take of western Joshua tree under section 2084)
- (B) Possible litigation involving the Commission (no known cases at this time)

## California Fish and Game Commission Meeting Schedule

**Note: As meeting dates and locations can change, please visit [www.fgc.ca.gov](http://www.fgc.ca.gov) for the most current list of meeting dates and locations.**

Meeting Date	Commission Meeting	Committee Meeting
January 12, 2021		<b>Wildlife Resources</b> Webinar/teleconference
February 10-11, 2021	Webinar/teleconference	
March 16, 2021		<b>Marine Resources</b> Webinar/teleconference
April 13, 2021		<b>Tribal</b> Webinar/teleconference
April 14-15, 2021	Webinar/teleconference	
May 11, 2021		<b>Wildlife Resources</b> Webinar/teleconference
May 11, 2021	Webinar/teleconference	
June 16-17, 2021	Webinar/teleconference	
July 20, 2021		<b>Marine Resources</b> Sacramento
August 17, 2021		<b>Tribal</b> Sacramento
August 18-19, 2021	Sacramento	
September 16, 2021		<b>Wildlife Resources</b> Sacramento
October 13-14, 2021	Sacramento	
November 9, 2021		<b>Marine Resources</b> Sacramento
December 14, 2021		<b>Tribal</b> Sacramento
December 15-16, 2021	Sacramento	



## **Other Meetings of Interest**

### **Association of Fish and Wildlife Agencies**

- September 12-15, 2021, Providence, RI

### **Pacific Fishery Management Council**

- March 3-10, 2021, webinar
- April 6-13, 2021, webinar
- June 22-29, 2021, Vancouver, WA
- September 8-15, 2021, Spokane, WA
- November 15-22, 2021, Costa Mesa, CA

### **Pacific Flyway Council**

- March 9, 2021, virtual meeting
- August or September 2021, TBD

### **Western Association of Fish and Wildlife Agencies**

- July 18-23, 2021 Santa Fe, NM

### **Wildlife Conservation Board**

- February 25, 2021, videoconference or teleconference
- May 27, 2021, videoconference or teleconference
- August 26, 2021, videoconference or teleconference
- November 18, 2021, videoconference or teleconference

## IMPORTANT COMMISSION MEETING PROCEDURES INFORMATION

### Welcome to a Meeting of the California Fish and Game Commission

This year marks the beginning of the 151st year of operation of the Commission in partnership with the California Department of Fish and Wildlife. Our goal is the preservation of our heritage and conservation of our natural resources through informed decision making; Commission meetings are vital in achieving that goal. In that spirit, we provide the following information to be as effective and efficient toward that end. Welcome and please let us know if you have any questions.

### Persons with Disabilities

Persons with disabilities needing reasonable accommodation to participate in public meetings or other Commission activities are invited to contact the Department's Equal Employment Opportunity (EEO) Office at (916) 653-9089 or [EEO@wildlife.ca.gov](mailto:EEO@wildlife.ca.gov). Accommodation requests for facility and/or meeting accessibility and requests for American Sign Language (ASL) Interpreters should be submitted at least two weeks prior to the event. Requests for Real-Time Captioners should be submitted at least four weeks prior to the event. These timeframes are to help ensure that the requested accommodation is met. If a request for an accommodation has been submitted but is no longer needed, please contact the EEO Office immediately.

### Stay Informed

To receive meeting agendas and regulatory notices about those subjects of interest to you, please visit the Commission's website, [www.fgc.ca.gov](http://www.fgc.ca.gov), to sign up on our electronic mailing lists.

### Submitting Comments on Agenda Items

The public is encouraged to comment on any agenda item. Verbal comments are only accepted during meetings. Written comments may be submitted by one of the following methods: E-mail to [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov); mail to California Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090; or deliver to California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814. Materials provided to the Commission may be made available to the general public.

### Written Comment Deadlines

The **Comment Deadline** for this meeting is **5:00 p.m. on December 30, 2020**. Written comments received at the Commission office by this deadline will be made available to Commissioners prior to the meeting.

The **Supplemental Comment Deadline** for this meeting is **noon on January 7, 2021**. Comments received by this deadline will be made available to Commissioners at the meeting.

### Petitions for Regulation Change

Any person requesting that the Commission adopt, amend, or repeal a regulation must complete and submit form FGC 1, "Petition to the California Fish and Game Commission for Regulation Change" (as required by Section 662, Title 14, CCR). The form is available at <https://fgc.ca.gov/Regulations/Petition-for-Regulation-Change>. Petitions for regulation change are received at the Commission's regularly-scheduled meetings in February, April, June, August, October and December.

## **Non-Regulatory Requests**

All non-regulatory requests will follow a two-meeting cycle to ensure proper review and thorough consideration of each item. Non-regulatory requests are received at the Commission's regularly-scheduled meetings in February, April, June, August, October and December.

## **Speaking at the Meeting**

To speak on an agenda item, please "raise" your hand either through the Zoom function or by pressing \*9 once on your phone when prompted at the beginning of the agenda item.

1. Speakers will be called one at a time; please pay attention to when your name is called.
2. When addressing the Commission, give your name and the name of any organization you represent, and provide your comments on the item under consideration.
3. If there are several speakers with the same concerns, please appoint a spokesperson and avoid repetitive testimony.
4. The presiding commissioner will allot between one and three minutes per speaker per agenda item, subject to the following exceptions:
  - a. Individuals may receive advance approval for additional time to speak if requests for additional time to speak are received by email or delivery to the Commission office by the **Supplemental Comment Deadline**. The president or designee will approve or deny the request no later than 5:00 p.m. two days prior to the meeting.
  - b. An individual requiring an interpreter is entitled to at least twice the allotted time pursuant to Government Code Section 11125.7(c).
  - c. An individual may receive additional time to speak to an agenda item at the request of any commissioner.

## **Visual Presentations/Materials**

All electronic presentations must be submitted by the **Supplemental Comment Deadline** and approved by the Commission executive director before the meeting.

1. Electronic presentations must be provided by email to [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov).
2. All electronic formats must be Windows PC compatible.

## STAFF SUMMARY FOR JANUARY 12, 2021

**2. GENERAL PUBLIC COMMENT****Today's Item****Information** **Action** 

Receive verbal public comments for items not on the agenda.

**Summary of Previous/Future Actions (N/A)****Background**

Today's agenda item is to receive verbal public comments for items not on the agenda. Under the Bagley-Keene Open Meeting Act, FGC cannot take action on any matter not included on the agenda, except to schedule issues raised by the public for consideration at future meetings.

Comments submitted in writing are held for receipt at regularly-scheduled FGC meetings in Feb, Apr, Jun, Aug, Oct and Dec. Written comments submitted following the Dec 9-10, 2020 FGC meeting will be received at the Feb 10-11, 2021 meeting.

**Significant Public Comments (N/A)****Recommendation**

**FGC staff:** Consider whether to add any items to a future meeting agenda to address issues that are raised during public comment.

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

## STAFF SUMMARY FOR JANUARY 12, 2021

**3. MAMMAL HUNTING REGULATIONS****Today's Item****Information** **Action** 

Discuss proposed changes to regulations for deer and antelope hunting quotas and seasons, and regulations for elk, antelope, and bighorn sheep tags.

**Summary of Previous/Future Actions**

- |                                     |   |
|-------------------------------------|---|
| • WRC vetting                       | Sep 17, 2020; WRC, Webinar/Teleconference   |
| • Notice hearing                    | Dec 9-10, 2020; Webinar/Teleconference      |
| • <b>Today's discussion hearing</b> | <b>Jan 12, 2021; Webinar/Teleconference</b> |
| • Adoption hearing                  | Feb 10-11, 2021; Webinar/Teleconference     |

**Background**

Proposed changes to the hunting regulations for various big game mammals are combined for concurrent action under a single rulemaking. For the 2021 season, DFW is proposing amendments to mammal hunting regulations in sections 360 (Exhibit 1) and 363 (Exhibit 2), and to add Section 708.19 (Exhibit 3) for select tag and point restoration due to fires and public lands closures during the 2020 season. DFW proposes several changes as reflected in the initial statements of reasons (ISORs):

1. Deer tag numbers and season adjustments (Exhibit 1)
  - Amend the number of deer license tags in zone X-3b.
  - Modify the season for two hunts, G-8 and J-10.
2. Pronghorn antelope tag numbers (Exhibit 2)
  - Adjust the number of tags available for the Zone 3 Likely Tables period 1 and 2 buck hunts.
3. Elk, bighorn sheep and pronghorn antelope preference points and tag refunds (Exhibit 3)
  - Authorize DFW to refund tag fees, reinstate preference points, and award one preference point for the license year for specified elk, bighorn sheep, and pronghorn antelope hunts for hunters who endured a significant loss of opportunity due to forest closures or fire in specified hunt zones. This new section would remain in effect only until June 30, 2021.

**Significant Public Comments (N/A)****Recommendation (N/A)****Exhibits**

1. [ISOR \(deer\)](#)
2. [ISOR \(antelope\)](#)
3. [ISOR \(tag/points restoration\)](#)

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

## STAFF SUMMARY FOR JANUARY 12, 2021

**4. BUMBLE BEES****Today's Item**Information Action 

Consider whether listing four bumble bee species as endangered under the California Endangered Species Act (CESA) may be warranted.

**Summary of Previous/Future Actions**

- Receive petition Oct 17, 2018
- Received DFW 90-day evaluation Apr 17 2019; Santa Monica
- Determined petitioned action may be warranted Jun 12-13, 2019; Redding
- Discussed trial court ruling (closed session) Dec 9-10, 2020; Webinar/Teleconference
- **Today consider rescinding previous decision** Jan 12, 2021; Webinar/Teleconference

**Background**

In Oct 2018, FGC received a petition from three organizations to list Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as endangered under CESA.

California Fish and Game Code Section 2073.5 requires that DFW evaluate the petition and submit to FGC a written evaluation with a recommendation, which was received at FGC's Apr 17, 2019 meeting. The report delineates each of the categories of information required for a petition, evaluates the sufficiency of the available scientific information for each of the required components, and incorporates additional relevant information that DFW possessed or received during the review period. Based upon the information contained in the petition and other relevant information, DFW concluded that there was sufficient scientific information available to indicate that the petitioned action may be warranted.

In Jun 2019, FGC determined that listing may be warranted pursuant to Section 2074.2 of the Fish and Game Code, accepted the petition for further action under CESA, and subsequently provided notice of its decision.

In a writ proceeding brought before the Sacramento County Superior Court by a group of entities, case number 34-2019-80003216-CU-WM-GDS, the trial court entered a final ruling granting the petition for a writ, a copy of which was included in the Dec 2020 meeting materials. The writ petition challenged FGC's Jun 2019 decision; the trial court's ruling found that CESA did not grant FGC authority over the listing of the four bumble bee species. On Dec 10, 2020, FGC staff received notice of entry of the writ of mandate with a copy of the executed writ (see Executive Session, Exhibit A2 for this meeting). The writ directs the Commission to rescind the Jun 2019 determination and "...provide notice that the Bumble Bees [*sic*] are not candidate species."

## STAFF SUMMARY FOR JANUARY 12, 2021

At the time of the writing of this summary, no appeal has been filed in the matter. If an appeal is filed, the judgment and writ are automatically stayed. If the writ is not stayed, FGC must comply with the writ within 90 days from receipt of the notice, which results in the deadline falling on Mar 10, 2021.

**Significant Public Comments (N/A)****Recommendation**

**FGC staff:** Determine whether it is prudent to rescind the Jun 2019 decision at this time.

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

## STAFF SUMMARY FOR JANUARY 12, 2021

**Executive Session****Today's Item**Information Action 

Executive session will include two standing topics:

- (A) Pending litigation to which FGC is a party
- (B) Possible litigation involving FGC

**Summary of Previous/Future Actions (N/A)****Background**

During the public portion of its meeting, FGC will call a recess and reconvene in a closed session pursuant to the authority of California Government Code subsection 11126 (e)(1). FGC will address two items in closed session:

**(A) Pending litigation to which FGC is a party**

See agenda for a complete list of pending civil litigation to which FGC is a party, at the time the agenda was made public.

*Almond Alliance v. FGC*: In a writ proceeding brought before the Sacramento County Superior Court by a group of entities, case number 34-2019-80003216-CU-WM-GDS, the trial court entered a final ruling granting the petition for a writ. The writ petition challenged FGC's Jun 2019 decision related to whether four bumble bee species may be listed under the California Endangered Species Act (CESA); the trial court's ruling finds that CESA did not grant FGC authority over the four bumble bee species. The trial court has entered a judgment and a writ (exhibits A1 and A2) directing FGC to take action; FGC staff received copies of each on Dec 10. If FGC wishes to appeal the matter, a notice of appeal must be filed no later than 60 days from the date of the notices (Feb 8, 2021).

**(B) Possible litigation involving FGC****Significant Public Comments (N/A)****Recommendation**

**FGC staff:** Determine whether to appeal the ruling in *Almond Alliance of California, et al v. California Fish and Game Commission, et al.*

**Exhibits**

- A1. [Notice of entry of judgment or order with attached judgment on petition for writ of mandate, dated Dec 10, 2020](#)
- A2. [Notice of entry of judgment or order with attached writ of mandate to FGC, dated Dec 10, 2020](#)

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



State of California  
Fish and Game Commission  
Initial Statement of Reasons for Regulatory Action

Amend Section 360  
Title 14, California Code of Regulations  
Re: Deer Tag Numbers and Season Adjustments

I. Date of Initial Statement of Reasons: November 14, 2020

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 10, 2020

Location: Teleconference

(b) Discussion Hearing

Date: January 12, 2021

Location: Teleconference

(c) Adoption Hearing

Date: February 10, 2021

Location: Teleconference

III. Description of Regulatory Action

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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The Fish and Game Commission (Commission) periodically considers the recommendations of the Department of Fish and Wildlife (Department) in establishing deer regulations. Section 360 provides definitions, hunting zone descriptions, season opening and closing dates, and tag quotas (total number of hunting tags to be made available) for deer.

To maintain appropriate harvest levels and hunting quality, tag quotas must be periodically adjusted in response to dynamic environmental and biological conditions. Current regulations in subsections 360(a) through (c) specify deer license tag quotas for each hunt zone in accordance with management goals and objectives. Subsection 360(a) describes the area, season, bag and possession limit, and numbers of tags for zones A through D. Subsection 360(b) describes the area, season, bag and possession limit, and numbers of tags for zone X. Subsection 360(c) describes the area, season, bag and possession limit, numbers of tags, and any special conditions for Additional Hunts.

The specific recommended regulation changes are:

**1. Number of Tags**

The proposed action amends subsection 360(b)(4)(D) to reduce hunting tag numbers for the Zone X-3b General Season, while maintaining previous year tag quotas for all other

deer hunt zones. Recent population trends and hunter success suggest deer populations in the X-3b hunt zone have decreased. License tag numbers are based on input from Department regional staff and the public to address goals for the unit, including deer conservation and providing hunting opportunities.

The proposed amendment to the number of deer license tags in subsections 360 (b)(4) is necessary to allow the appropriate level of hunting opportunity and harvest of bucks in the population while achieving or maintaining the buck to doe ratios at, or near, objective levels set forth in the deer herd management plans. The number of deer license tags are based upon findings from the annual harvest and fall and spring surveys.

## **2. Modify Season for Additional Hunt G-8**

Existing subsection 360(c)(5) regulations for Additional Hunt G-8 (Fort Hunter Liggett Antlerless Deer Hunt) provide for hunting to open on October 3 and continue for two (2) consecutive days, and reopen on October 10 and continue for three (3) consecutive days.

The current proposal would modify the season to account for the annual calendar shift by changing the season to open on the first Saturday in October and continue for two (2) consecutive days and reopen on the second Saturday in October and continue for three (3) consecutive days, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and December 31.

This change is necessary to minimize the need for annual regulatory adjustments for calendar progression as well as to allow the Fort Hunter Liggett Base Commander to maintain hunt dates in order to accommodate the military base operations. No loss of hunter opportunity would result from this action and the proposal is consistent with existing deer herd management plan recommendations.

## **3. Modify Season for Additional Hunt J-10**

Existing subsection 360(c)(32) regulations for Additional Hunt J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt) provide for hunting to open on October 3 and continue for two (2) consecutive days and reopen on October 10 and continue for three (3) consecutive days.

The current proposal would modify the season to account for the annual calendar shift by changing the season to open on the first Saturday in October and continue for two (2) consecutive days and reopen on the second Saturday of October and continue for three (3) consecutive days, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and December 31.

This change is necessary to minimize the need for annual regulatory adjustments for calendar progression as well as to allow the Fort Hunter Liggett Base Commander to maintain hunt dates in order to accommodate the military base operations. No loss of hunter opportunity would result from this action and the proposal is consistent with existing deer herd management plan recommendations.

### **(b) Goals and Benefits of the Regulation**

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.

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

Authority: Sections 200, 203, 219, 265, 460, 3051, 3452, 3453, 3953 and 4334, Fish and Game Code.

Reference: Sections 200, 203, 203.1, 255, 265, 458, 459, 460, 3051, 3452, 3453, 3953 and 4334, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None

(e) Identification of Reports or Documents Supporting Regulation Change: None

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

Fish and Game Commission's Wildlife Resources Committee meeting held on September 14, 2020, virtual meeting.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

1. Number of Tags

There is no reasonable alternative to the proposed action.

2. Modify Season for Additional Hunt G-8

Modify season to allow for the annual calendar shift. This proposal was approved because it reduces the need to make annual adjustments to the regulations for calendar progression and minimizes conflict with base operation scheduling with no loss of hunter opportunity.

3. Modify Season Additional Hunt J-10

Modify season to allow for annual calendar shift. This proposal was approved because it reduces the need to make annual adjustments to the regulations for calendar progression and minimizes conflict with military operations and provides hunter opportunity.

(b) No Change Alternative

1. Number of Tags

The "no change" alternative was considered and rejected because it would not meet the project objectives. Retaining the current number of tags for the hunts listed would not be responsive to changes in the status of the herds. The deer herd management plans specify objective levels for the proportion of bucks in the herds. These ratios are maintained and managed in part by modifying the number of tags. The "no change" alternative would not allow management of the desired proportion of bucks stated in the approved deer herd management plans.

## 2. Modify Season for Additional Hunt G-8

The “No Change Alternative” was considered and found inadequate to attain the project objectives. Retaining the current season length and timing would be unresponsive to Base operations and require annual adjustments to minimize likelihood of conflict with scheduled activities and/or unnecessarily restrict hunter opportunity.

## 3. Modify Season Additional Hunt J-10

The “No Change Alternative” was considered and found inadequate to attain the project objectives. Retaining the current season length and timing would be unresponsive to Base operations and require annual adjustments to minimize likelihood of conflict with scheduled activities and/or unnecessarily restrict hunter opportunity.

## 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. The proposed number of tags is within the range of tags analyzed in the Final Environmental Document regarding Deer Hunting (California Department of Fish and Game 2007) and the approved deer herd management plans.

## 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 action adjusts tag quotas for existing hunts and modifies season dates for hunts on military land. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to 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 proposed action will not have significant impacts on the creation or elimination of jobs or the creation of new businesses or the elimination of existing businesses within California because it is unlikely to result in a change in hunting effort. The proposed action does not provide benefits to worker safety because it does not address working conditions.

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 proposed action will not provide benefits to worker safety. The Commission anticipates benefits to the State’s environment in the sustainable management of natural resources.

(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 this 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

(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 no significant changes in hunting activity levels are anticipated.

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

The regulation will not impact the creation of new businesses or the elimination of businesses because no significant changes in hunting activity levels are anticipated.

(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 within the State because no significant changes in hunting activity levels are anticipated.

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

The proposed regulation will benefit the health and welfare of California residents by maintaining sustainable deer populations and providing opportunities for the public to participate in a healthy outdoor activity. Hunters and their families benefit from fresh game to eat, and from the benefits of outdoor recreation, including exercise. People who hunt have a special connection with the outdoors and an awareness of the relationships among wildlife, habitat, and humans. That awareness provides an increased understanding of the role humans

play as caretakers of the environment. Hunting is a tradition that is often passed from one generation to the next creating a special bond between family members and friends.

(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

As set forth in Fish and Game Code Section 1801, it is the policy of the State to encourage the conservation, maintenance, and use of the State's living resources, and to conserve and maintain recreational uses of wildlife, including hunting California's wild deer populations. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of deer to ensure their continued existence and the maintenance of a sufficient resource to support recreational opportunity. Adoption of scientifically based deer tag quotas provides for the maintenance of sufficient deer populations to ensure those objectives are met. The fees that hunters pay for licenses and tags fund wildlife conservation.

(g) Other Benefits of the Regulation

Hunting seasons provide incentives for private landowners to maintain habitats that benefit deer and other sympatric species.

## Informative Digest/Policy Statement Overview

The Fish and Game Commission (Commission) periodically considers the recommendations of the Department of Fish and Wildlife (Department) in establishing deer regulations. Current regulations in Section 360, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season dates, and deer license tag quotas. To achieve deer herd management goals and objectives and maintain hunting quality, it is periodically necessary to adjust quotas, seasons, and other criteria in response to dynamic environmental and biological conditions. The proposed regulatory action will amend Section 360 providing the number of tags and season dates for hunting in the 2021–2022 season.

Proposed Amendments: The recommended number of tags and season dates for deer hunting for 2021-2022 are presented in the proposed regulatory text of Section 360.

### **1. Number of Tags**

The proposed action amends subsection 360(b)(4)(D) to reduce hunting tag numbers for the Zone X-3b, while maintaining previous year tag quotas for all other deer hunt zones. Recent population trends and hunter success suggest deer populations in the X-3b hunt zone have decreased. License tag numbers are based on input from Department regional staff and the public to address goals for the unit, including deer conservation and providing hunting opportunities.

The proposed amendment to the number of deer license tags in subsections 360 (b)(4) is necessary to allow the appropriate level of hunting opportunity and harvest of bucks in the population while achieving or maintaining the buck to doe ratios at, or near, objective levels set forth in the deer herd management plans. The number of deer license tags are based upon findings from the annual harvest and fall and spring surveys.

### **2. Modify Season**

Existing regulations for Additional Hunts G-8 (Fort Hunter Liggett Antlerless Deer Hunt) and J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt) provide for hunting to begin on October 3 and continue for two (2) consecutive days and reopen on October 10 and continue for three (3) consecutive days. The proposal would modify the season to account for the annual calendar shift. The proposal would change the season dates to open on the first Saturday in October and continue for two (2) consecutive days and reopen on the second Saturday in October and continue for three (3) consecutive days, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and December 31.

### Benefits of the regulations

The deer herd management plans specify objective levels for the proportion of bucks in the herds. These ratios are maintained and managed in part by annually modifying the number of hunting tags. The final values for the license tag numbers will be based upon findings from the annual harvest and herd composition counts. Adjusting tag allocations in response to current deer herd conditions contributes to the sustainable management of healthy deer populations and the maintenance of continued hunting opportunities.

### 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 and Compatibility with State Regulations

The Fish and Game Commission, pursuant to Fish and Game Code sections 200 and 203, has the sole authority to regulate deer hunting in California. Commission staff has searched the CCR and has found the proposed changes pertaining to deer tag allocations are consistent with sections 360, 702, 708.5 and 708.6 of Title 14. Therefore, the Commission has determined that the proposed changes are neither inconsistent nor incompatible with existing State regulations.



Proposed Regulatory Language

Section 360, Title 14 CCR, is amended to read:

**§360. Deer**

Except as otherwise provided in this Title 14, deer may be taken only as follows:

**(a) A, B, C, and D Zone Hunts.**

...[No changes to subsections (1) through (17)]

**(b) X-Zone Hunts.**

...[No changes to subsections (1) through (3)]

(4) Zone X-3b.

... [No changes to subsections (A) through (C)]

(D) Number of Tags: ~~795~~ 500.

...[No changes to subsections (5) through (17)]

**(c) Additional Hunts.**

...[No changes to subsections (1) through (4)]

(5) G-8 (Fort Hunter Liggett Antlerless Deer Hunt).

... [No changes to subsection (A)]

(B) Season: The season for additional hunt G-8 (Fort Hunter Liggett Antlerless Deer Hunt) shall open on the first Saturday in October ~~3~~ and continue for two (2) consecutive days and reopen on the second Saturday in October and continue for three (3) consecutive days, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and ~~for 2 consecutive days and reopen on October 10 and extend for 3 consecutive days, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and~~ December 31.

... [No changes to subsections (C) through (E)]

...[No changes to subsections (6) through (31)]

(32) J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt).

... [No changes to subsection (A)]

(B) Season: The season for additional hunt J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt) shall open on the first Saturday in October ~~3~~ and continue for two (2) consecutive days and reopen on the second Saturday of October and continue for three (3) consecutive days, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and ~~for 2 consecutive days and reopen on October 10 and extend for 3 consecutive days, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and~~ December 31.

... [No changes to subsection (C) through (E)]

...[No changes to subsections (33) through (44)]

Note: Authority: Sections 200, 203, 265, 460, 3051, 3452, 3453, 3953 and 4334, Fish and Game Code. Reference: Sections 200, 203, 203.1, 255, 265, 458, 459, 460, 3051, 3452, 3453, 3953 and 4334, Fish and Game Code.

State of California  
Fish and Game Commission  
Initial Statement of Reasons for Regulatory Action

Amend Section 363  
Title 14, California Code of Regulations  
Re: Pronghorn Antelope Tag Numbers

I. Date of Initial Statement of Reasons: November 14, 2020

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 10, 2020

Location: Teleconference

(b) Discussion Hearing

Date: January 12, 2021

Location: Teleconference

(c) Adoption Hearing

Date: February 10, 2021

Location: Teleconference

III. Description of Regulatory Action

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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The Fish and Game Commission (Commission) periodically considers the recommendations of the Department of Fish and Wildlife (Department) in updating antelope regulations. Section 363 provides descriptions of hunting zones, season opening and closing dates, and tag quotas (total number of hunting tags to be made available), and special conditions for pronghorn antelope.

To maintain appropriate harvest levels and hunting quality, tag must be adjusted periodically in response to dynamic environmental and biological conditions.

Current regulations specify the number of pronghorn antelope hunting tags for the 2020 season—ranges that were last modified in 2017. The proposed regulatory action will amend subsection 363(m) providing the number of tags for hunting in the 2021–2022 season.

## Number of Tags

The proposed action amends subsection 363(m) to reduce hunting tag numbers for the Likely Tables General Season buck tags in Period 1 and Period 2, while maintaining previous year tag quotas for all other pronghorn antelope hunt zones and seasons. Recent population trends and hunter success suggest pronghorn antelope populations in the Likely Tables have decreased, but pronghorn antelope populations in all other hunt zones are stable. The proposed amendment to number of antelope hunting tags in subsection 363(m) is necessary to allow for a biologically appropriate harvest of bucks and does in the pronghorn antelope population, and will achieve/maintain buck ratios at or above minimum levels specified in appropriate management plans (California Department of Fish and Game 1989). Proposed tag quotas provided in Table 1 (below) are the recommendations of the Department and are within conservative ranges identified in the 2004 Final Environmental Document Regarding Pronghorn Antelope Hunting.

### (b) Goals and Benefits of the Regulation

The proposed regulations will contribute to the sustainable management of pronghorn populations in California. Population objectives are maintained and managed in part by periodically modifying the number of tags. The final recommended number of tags will be based upon findings from annual harvest, herd composition counts, and population estimates where appropriate.

### (c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority: Sections 200, 203, 219, 331, 1050 and 10502, Fish and Game Code.

Reference: Sections 331, 1050, 10500 and 10502, Fish and Game Code.

### (d) Specific Technology or Equipment Required by Regulatory Change: None.

### (e) Identification of Reports or Documents Supporting Regulation Change: None(f) Public Discussions of Proposed Regulations Prior to Notice Publication

Fish and Game Commission's Wildlife Resources Committee meeting held on September 14, 2020, virtual meeting.

## IV. Description of Reasonable Alternatives to Regulatory Action

### (a) Alternatives to Regulation Change

#### Number of Tags

No alternatives were identified. Pronghorn tag quotas must be changed periodically in response to a variety of biological and environmental conditions.

### (b) No Change Alternative

#### Number of Tags

The "no-change" alternative was considered and rejected because it would not meet project objectives. Retaining the current number of tags for the hunts listed would not be responsive to changes in the status of the herds. The pronghorn management plans specify objective levels

for pronghorn numbers and the proportion of bucks in the herds. These numbers and ratios are maintained and managed in part by modifying the number of tags allocated for hunting. The “no change” alternative would not allow management of the desired proportion of bucks stated in the pronghorn management plan (California Department of Fish and Game 1989).

#### 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. The maximum number of tags available in the proposed range is at or below the number of tags analyzed in the 2004 Final Environmental Document Regarding Pronghorn Antelope Hunting.

#### 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 action adjusts tag quotas for existing hunts. Considering the relatively small number of tags issued over the entire state, this proposal is economically neutral to 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 proposed action will not have significant impacts on the creation or elimination of jobs or the creation of new businesses or the elimination of existing businesses within California because it is unlikely to result in a change in hunting effort. The proposed action does not provide benefits to worker safety because it does not address working conditions.

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 proposed action will not provide benefits to worker safety. The Commission anticipates benefits to the State’s environment in the sustainable management of natural resources.

##### (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 this 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

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

No impact to minor negative impacts on the creation of jobs within businesses that provide services to pronghorn hunters may result from the adoption of the proposed pronghorn hunting regulations for the 2021–22 season as compared to regulations for the 2020–21 season.

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

The proposed regulation is not expected to prompt the creation of new businesses or the elimination of existing businesses within the state. Minor variations in regulations pertaining to tag quotas and hunting 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 the trips are not expected to change substantially.

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

The proposed minor variations in pronghorn tag quotas are, by themselves, unlikely to stimulate substantial expansion of businesses currently doing business in the state. The long-term intent of the proposed regulations is to sustainably manage pronghorn populations, and consequently, the long-term viability of various businesses that serve recreational pronghorn hunters.

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

The proposed regulation will benefit the health and welfare of California residents by maintaining sustainable pronghorn populations and providing opportunities for the public to participate in a healthy outdoor activity. Hunting is an outdoor activity that can provide several health and welfare benefits to California residents. Hunters and their families benefit from fresh game to eat, and from the benefits of outdoor recreation, including exercise. People who hunt have a special connection with the outdoors and an awareness of the relationships among wildlife, habitat, and humans. That awareness provides an increased understanding of the role

humans play as caretakers of the environment. Hunting is a tradition that is often passed from one generation to the next creating a special bond between family members and friends.

(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

As set forth in Fish and Game Code Section 1801, it is the policy of the state to encourage the conservation, maintenance, and use of fish and wildlife 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 pronghorn to ensure their continued existence and the maintenance of a sufficient resource to support recreational opportunity. Adoption of scientifically based pronghorn seasons and tag quotas provides for the maintenance of sufficient pronghorn populations to ensure those objectives are met. The fees that hunters pay for licenses and tags fund wildlife conservation.

(g) Other Benefits of the Regulation

Hunting seasons provide incentives for private landowners to maintain habitats that benefit pronghorn and other sympatric species.

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

The Fish and Game Commission (Commission) periodically considers the recommendations of the Department of Fish and Wildlife (Department) in updating antelope regulations. Section 363 provides descriptions of hunting zones, season opening and closing dates, and tag quotas (total number of hunting tags to be made available), and special conditions for pronghorn antelope. To maintain appropriate harvest levels and hunting quality, tag must be adjusted periodically in response to dynamic environmental and biological conditions. Current regulations specify the number of pronghorn antelope hunting tags for the 2020 season—ranges that were last modified in 2017. The proposed regulatory action will amend subsection 363(m) providing the number of tags for hunting in the 2021–2022 season.

Proposed Amendments: The recommended quotas for pronghorn antelope hunting tags for 2021-2022 are presented in the proposed regulatory text of Section 363. Subsection 363(m) specifies pronghorn license tag quota ranges for each hunt, in accordance with management goals and objectives (Table 1).

### **Number of Tags**

The proposed action amends subsection 363(m) to reduce hunting tag numbers for the Likely Tables General Season buck tags in Period 1 and Period 2, while maintaining previous year tag quotas for all other pronghorn antelope hunt zones and seasons. Recent population trends and hunter success suggest pronghorn antelope populations in the Likely Tables have decreased, but pronghorn antelope populations in all other hunt zones are stable. The proposed amendment to number of antelope hunting tags in subsection 363(m) is necessary to allow for a biologically appropriate harvest of bucks and does in the pronghorn antelope population, and will achieve/maintain buck ratios at or above minimum levels specified in appropriate management plans (California Department of Fish and Game 1989). Proposed tag quotas provided in Table 1 (below) are final recommendations of the California Department of Fish and Wildlife and are within conservative ranges identified in the 2004 Final Environmental Document Regarding Pronghorn Antelope Hunting.

### **Benefits of the regulations**

The proposed regulations will contribute to the sustainable management of pronghorn populations in California. Existing pronghorn herd management goals specify objective levels for the proportion of bucks to does in the herds, as well as population abundance. These ratios and abundance are maintained and managed in part by periodically modifying the number of tags. The final recommended number of tags will be based upon findings from annual harvest, herd composition counts, and population estimates where appropriate.

### **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 and compatibility with existing state regulations**

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200 and 203, has the sole authority to regulate pronghorn hunting in California. Commission staff has searched the CCR



and has found the proposed changes pertaining to pronghorn tag allocations are consistent with sections 363, 702, 708.10 Title 14. Therefore, the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

Proposed Regulatory Language

Section 363, Title 14 CCR, is amended to read:

**§363. Pronghorn Antelope.**

The Lava Beds National Monument and Federal and State Game Refuges lying within the hunt boundary are closed to pronghorn antelope hunting, except for the state's Hayden Hill (1S) and Blacks Mountain (1F) game refuges in Lassen County and the Clear Lake National Wildlife Refuge in Modoc County. Refer to subsection 363(b)(5) for special conditions for permission to enter and hunt pronghorn antelope in the Clear Lake National Wildlife Refuge.

. . . [No changes to subsections 363(a)(1) through 363(l)(7)] . . .

(m) Pronghorn Antelope Tag Allocations Table.

2017 Pronghorn Antelope Tag Allocations

Hunt Area	Archery-Only Season		General Season		General Season	
	Buck	Doe	Period 1	Period 1	Period 2	Period 2
			Buck	Doe	Buck	Doe
Zone 1 - Mount Dome	0	0	2	0	0	0
Zone 2 - Clear Lake	1	0	15	0	0	0
Zone 3 - Likely Tables	15	0	<del>45</del> <u>25</u>	0	<del>45</del> <u>25</u>	0
Zone 4 - Lassen	5	0	35	0	35	0
Zone 5 - Big Valley	1	0	20		0	0
Zone 6 - Surprise Valley	1	0	10	0	0	0
Likely Tables Apprentice Hunt	N/A	N/A	5 Either Sex	5 Either Sex	0	
Lassen Apprentice Hunt	N/A	N/A	5 Either Sex	5 Either Sex	0	
Big Valley Apprentice Hunt	N/A	N/A	1 Either Sex	1 Either Sex	0	
Surprise Valley Apprentice Hunt	N/A	N/A	4 Either Sex	4 Either Sex	0	
Fund-Raising Hunt	N/A	N/A	2 Buck			

Note: Authority cited: Sections 219, 265, 331 and 1050, Fish and Game Code. Reference: Sections 331, 713 and 1050, Fish and Game Code.

State of California  
Fish and Game Commission  
Initial Statement of Reasons for Regulatory Action

Add Section 708.19  
Title 14, California Code of Regulations  
Re: Elk, Bighorn Sheep, and Pronghorn Antelope Preference Points and Tag Refunds

I. Date of Initial Statement of Reasons: November 14, 2020

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 10, 2020

Location: Teleconference

(b) Discussion Hearing

Date: January 12, 2021

Location: Teleconference

(c) Adoption Hearing

Date: February 10, 2021

Location: Teleconference

III. Description of Regulatory Action

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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The Fish and Game Commission (Commission) periodically considers recommendations from the Department of Fish and Wildlife (Department) in establishing big game mammal regulations. Specifically, the Department manages elk, bighorn sheep, and pronghorn antelope resources in California. Elk hunting tags, bighorn sheep hunting tags, and pronghorn antelope hunting tags are required to hunt these species in California. The Department distributes hunting tags for elk, bighorn sheep, and pronghorn antelope annually via the big game drawing. Public demand for elk, bighorn sheep, and pronghorn antelope hunting tags exceeds the available opportunities; therefore, a modified preference point system was implemented in 2002 (currently Section 708.14) to provide preference to hunters who have applied for, but not drawn, tags in past drawings. Each year a hunter applies for an elk, bighorn sheep, or pronghorn antelope hunting tag and is not drawn, the hunter receives a preference point which gives that hunter preference in future drawings for that species. A portion of the quota for elk, bighorn sheep, and pronghorn antelope tags is allocated by preference point drawing each year. A portion of tags are issued randomly to allow some opportunity for new hunters and hunters that do not have enough preference points to draw through the preference point portion of the drawing.

The catastrophic and unprecedented 2020 fire season caused public land closures, including the temporary closure of all national forests in California beginning on September 9, 2020. The

closure occurred before or during the elk, bighorn sheep, and pronghorn antelope hunting seasons for the hunts addressed in the proposed regulation. This resulted in a loss of opportunity for hunters who had “once in a lifetime” elk or pronghorn antelope hunting tags. The resulting loss of opportunity meant some hunters received little or no chance to hunt using tags acquired using many years of accumulated preference points. Some hunters used up to 18 years of preference points to obtain the required hunting tags for the hunts specified in the proposed regulation.

### **Preference Point Reinstatements and Tag Refunds**

The purpose of the proposed regulation is to authorize the Department to refund tag fees, reinstate preference points, and award one preference point for the license year for specific elk, bighorn sheep, and pronghorn antelope hunts. The Department is proposing to add Section 708.19 to allow elk, bighorn sheep, and pronghorn antelope hunters with specific tags to return their tags for a refund, preference point reinstatement, and earn one preference point for the license year for the species. This new section would remain in effect only until June 30, 2021. The proposed regulation would allow the refund of tag fees, reinstatement of preference points, and award of one preference point for the license year for hunters who endured a loss of opportunity due to forest closures or a fire in the hunt zone.

This regulation change is necessary for the Commission to provide a method for hunters to obtain refunds and preference points for elk, bighorn sheep, and pronghorn antelope tags that were not usable due to public land closures caused by fires. The proposal would affect hunters who were drawn for the following 14 elk hunts referenced in Section 364, 1 bighorn sheep hunt referenced in Section 362, and 2 pronghorn antelope hunts referenced in Section 363:

#### Elk

- Marble Mountain General Methods Roosevelt Elk Apprentice (Hunt 408 - subsection 364(v)(1)(A))
- Marble Mountains antlerless (Hunt 301 – subsection 364(r)(3)(A))
- Marble Mountains bull (Hunt 302 – subsection 364(r)(3)(A))
- Northeastern California Archery Only Rocky Mountain Elk (Hunt 411 - subsection 364(w)(1)(A))
- Northeastern California apprentice (Hunt 409 – subsection 364(v)(2)(A))
- Northeastern California bull (Hunt 305 - subsection 364(s)(1)(A))
- Northwestern California antlerless (Hunt 374 – subsection 364(r)(2)(A))
- Northwestern California bull (Hunt 355 – subsection 364(r)(2)(A))
- Northwestern California either sex (Hunt 483 – subsection 364(r)(2)(A))
- Siskiyou antlerless (Hunt 401 - subsection 364(r)(1)(A))
- Siskiyou bull (Hunt 300 – subsection 364(r)(1)(A))
- East Park Reservoir antlerless (Hunt 463 - subsection 364(u)(13)(A))
- East Park Reservoir bull (Hunt 461 – subsection 364(u)(13)(A))

- Lake Pillsbury Period 1 antlerless (Hunt 331 – subsection 364(u)(16)(A))

#### Bighorn Sheep

- Zone 7 - White Mountains (subsection 362(a)(7))

#### Pronghorn Antelope

- Likely Tables Period 2 buck (Hunt 732 - subsection 363(c)(2)(A))
- Lassen Period 2 buck (Hunt 742 – subsection 363(d)(2)(A))

The cost of a resident elk tag is \$461.50. The cost of a resident bighorn sheep tag is \$443.25 and \$1,641.00 for a non-resident bighorn sheep tag. The cost of a resident pronghorn antelope tag is \$155.27. The cost of an elk, bighorn sheep, or pronghorn antelope tag for a junior hunter is \$21.12. Hunters who request preference points and a refund of their tag fees under the proposed regulation would receive a refund of their fees, reinstatement of their preference points, and earn one preference point for the license year, but they would be required to pay the \$30.90 nonrefundable big game tag return processing fee specified in Section 702. There are 68 elk hunters (including 4 apprentice hunters), 3 bighorn sheep hunters, 1 non-resident bighorn sheep hunter, and 38 pronghorn hunters who either did not hunt or did not harvest an animal in these hunts. A total of 110 hunters would be eligible to receive a refund of their tag fees, reinstatement of their preference points, and earn one preference point for the license year pursuant to this proposed regulation. The total amount refunded to hunters would be as much as \$35,092.49.

#### (b) Goals and Benefits of the Regulation

The goal of the proposed regulation is to provide equity of opportunity by allowing elk, bighorn sheep, and pronghorn antelope hunters who lost “once in a lifetime” hunting opportunities due to public land closures caused by unprecedented catastrophic wildfires, the option to obtain tag fee refunds, reinstatement of preference points, and one preference point for the license year. Some hunters with tags for the affected elk, bighorn sheep, and pronghorn hunts used many years (up to 18) of earned preference points to obtain their hunting tags. This proposal would allow hunters with specific tags, who lost opportunities due to public land closures caused by the wildfires in 2020, to use their accumulated preference points in the future to enter drawings for elk, bighorn sheep, or pronghorn antelope tags. This proposal is consistent with the Department’s efforts to recruit, retain, and reactivate hunters.

#### (c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority: Sections 200, 203, 219, 331, 1050 and 10502, Fish and Game Code.

Reference: Sections 331, 332, 713, 1050, 10500 and 10502, Fish and Game Code.

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

None.

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

None

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

Commission's Wildlife Resources Committee meeting held on September 14, 2020, virtual meeting.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Preference Points and Tag Refunds

No reasonable alternatives were identified. Unforeseen, unprecedented, and catastrophic wildfires in California lead to closures of public lands which limited certain elk, bighorn sheep, and pronghorn antelope tag holders from certain hunting opportunities. The Department looked at the concept of potentially reissuing the tags for the following hunt season to the impacted hunters but determined that was not feasible without significant changes to multiple existing regulatory sections. There is currently no authority to transfer license or tag items across license years. If it were determined that there was authority to do so, the Department currently does not have an efficient method in place to reissue tags to hunters for the following year and would have to make some operational changes to its licensing system at a minimum.

Additionally, if tags are reissued to hunters, the license system would have to be programmed to remove these tags from those available through the drawing process for 2021, thereby reducing the number of tags available for hunters in the 2021 big game drawing and changing the odds of being drawn. A reduction in available tags through the drawing could reduce participation in hunting by the public. More than 4 million acres have burned during the unprecedented 2020 fire season. While we currently do not have any evidence to suggest any significant impacts to big game populations, there is the potential that tag quotas could be adjusted for 2021 depending on population monitoring and habitat assessments. Depending on those efforts, there is the potential for changes that could complicate the feasibility of re-issuing the tags when there is a potential that some of these zones might have reduced or zero tags available for the 2021-2022 season

If reissuing tags to hunters for the following season is a priority of the Commission, this is an option that could be considered in the future through more deliberative public discussions and analysis but given the complexity of the issue, there is not enough time to work through all of the potential issues before next year's license and big game tags become available to the public. The Department can review existing authorities and complete an assessment of the steps that might be necessary through either legislative changes that might be necessary as well as any regulatory changes that may be needed to do so.

The proposed alternative to reinstate the hunter's preference points plus an additional point for the current license year is the only feasible option. These hunters will remain in the pool of hunters who have maximum points and theoretically have the same or similar odds to draw the tag the next year.

## (b) No Change Alternative

### Preference Points and Tag Refunds

The “no-change” alternative was considered and rejected because it would not meet project objectives. Given the unprecedented closure of public lands statewide due to a catastrophic and historic fire season, it would be unfair not to allow elk, bighorn sheep, and pronghorn antelope tag holders the opportunity to have their tags refunded, preference points restored, and earn a preference point for the license year. These tags are considered premium opportunities and once in a lifetime drawing, so allowing hunters to restore their points, earn a preference point for the license year, and receive a refund is justified.

## 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. Considering the relatively small number of tags to be returned from the elk and pronghorn antelope tags over the entire state, this proposal is economically neutral to 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 anticipates no impact on the creation or elimination of jobs within the state, no impact on the creation of new business, the elimination of existing businesses or the expansion of businesses in California as minor variations in hunting regulations are, by themselves, unlikely to provide a substantial enough economic stimulus to the state.

### (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 this proposed action. A \$30.90 nonrefundable big game tag return processing fee per refund, as specified in Section 702, is deducted from the amount refunded. The choice to obtain a refund is not required and is purely discretionary for each individual.



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

Under the proposed regulation, a total of 110 hunters could be eligible for tag refunds. Hunters would be required to pay the \$30.90 nonrefundable big game tag return processing fee specified in Section 702. There are 68 elk hunters (including four apprentice hunters), 3 resident and 1 non-resident bighorn sheep hunters, and 38 pronghorn antelope hunters who either did not hunt or did not harvest an animal during these hunts. At most, the Department would be required to issue 110 tag refunds for up to a net total of approximately \$35,092.49.

(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

This regulatory action is not anticipated to create any adverse impacts to businesses or the state economy. The areas of the state that were closed to the public were closed to all access and types of recreation, not just hunting. Any negative impacts are specifically attributed to wildfires and the subsequent public land closures. This specific regulation to refund select tag fees, restore preference points, and award one preference point for the license year permits the mitigation of some of the adverse negative impacts to individuals from the public land closures.

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

The proposed regulation is not anticipated to prompt the creation of new businesses or the elimination of existing businesses within the state. This proposed regulation pertains to preference points and tag refunds that are temporary and necessary to address unprecedented conditions that significantly limited public access and opportunities during a specific time period. The proposed regulation is unlikely to cause the elimination of existing businesses.

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

The proposed preference point reinstatements and tag refunds are unlikely to impact

expansion of businesses currently doing business in the state. The proposed regulations are short-term and are not anticipated to sustainably impact the long-term viability of various businesses that serve recreational hunters.

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

Although the closure of public lands to hunting in 2020 due to catastrophic and unprecedented wildfires kept members of the public from hunting outdoors in potentially dangerous conditions, including hazardous air quality, generally hunting is an outdoor activity that provides health and welfare benefits to California residents, and the unexpected closure of public lands limited this activity. Allowing preference point and tag fee returns will ensure these hunters are not unnecessarily and unfairly penalized by unprecedented circumstances beyond their control.

(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

As set forth in Fish and Game Code section 1801, it is the policy of the state to encourage the conservation, maintenance, and utilization of fish and wildlife resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, the providing of recreational opportunities. The hunters affected by the proposed regulation would be eligible to apply for a refund of their elk, bighorn sheep, and pronghorn antelope tag fees, reinstatement of their preference points, and earn one preference point for the license year, thus allowing these hunters to reapply for elk, bighorn sheep, and pronghorn antelope tags using their accumulated preference points in the future. If the preference points are not reinstated and an additional preference point awarded for the license year for the hunters affected by the proposed regulation, these hunters would be less likely to draw the tags required for hunting elk, bighorn sheep, and pronghorn antelope (therefore reducing their opportunity to hunt).

(g) Other Benefits of the Regulation

Preference point reinstatement, award of additional preference points for the license year, and tag fee refunds will help maintain support for hunting programs and conservation efforts by minimizing the impact to the public when their access was significantly impacted by unprecedented, catastrophic circumstances beyond their control. The refund allows them to purchase other related or unrelated goods and services.

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

The California Department of Fish and Wildlife (Department) manages elk, bighorn sheep, and pronghorn antelope resources in California. Elk hunting tags, bighorn sheep hunting tags, and pronghorn antelope hunting tags are required to hunt these species in California. The Department distributes hunting tags for elk, bighorn sheep, and pronghorn antelope annually via the big game drawing. Public demand for elk, bighorn sheep, and pronghorn antelope hunting tags exceeds the available opportunities; therefore, a modified preference point system was implemented in 2002, (currently Section 708.14) to provide preference to hunters who have applied for, but not received, tags in past drawings. Each year a hunter applies for an elk, bighorn sheep, or pronghorn antelope hunting tag and is not drawn, that hunter receives a preference point which gives that hunter preference in future drawings for that species. A portion of the tag quota for elk, bighorn sheep, and pronghorn antelope tags is allocated by preference point drawing each year. A portion of tags are issued randomly to allow some opportunity for new hunters and hunters that do not have enough preference points to draw through the preference point portion of the drawing.

The historic and catastrophic 2020 fire season caused unprecedented public land closures including the temporary closure of all national forests in California beginning on September 9, 2020. The closure occurred before or during the hunting seasons for all the hunts addressed in the proposed regulation. This resulted in a loss of opportunity for hunters who had “once in a lifetime” elk, bighorn sheep, or pronghorn antelope hunting tags. Hunters used many years of accumulated preference points (in many cases 18 years of preference points) to obtain the required tags for the hunts specified in the proposed regulation.

The Department is proposing to add Section 708.19 to allow hunters who lost their opportunity to hunt in 2020 due to land closures caused by unprecedented fires to return specified elk, bighorn sheep, and pronghorn antelope tags for a refund, reinstatement of the preference points used to obtain the tag through the drawing, and earn one preference point for the license year. Hunters who request a refund would be required to pay the \$30.90 nonrefundable big game tag return processing fee specified in Section 702. This proposal would affect up to 110 hunters.

### Benefits of the regulations

The proposed regulation will authorize the Department to reinstate preference points, award one additional preference point for the license year, and issue tag fee refunds to hunters who lost elk, bighorn sheep, and pronghorn antelope hunting opportunities due unprecedented fires and forest closures in 2020.

### Non-monetary benefits to the public

The Commission expects this proposal will provide non-monetary benefits to the public by promoting fairness in the allocation of public hunting opportunities because hunters who lost elk, bighorn sheep, and pronghorn antelope hunting opportunities in 2020 will have the ability to have their preference points reinstated, earn a preference point for the license year, and have another chance to obtain an elk, bighorn sheep, or a pronghorn antelope tag in the future. The Commission does not anticipate non-monetary benefits to the public through the protection of public health and safety, worker safety, the prevention of discrimination, the promotion social equity and the increase in openness and transparency in business and government.

### Consistency and compatibility with existing state regulations

The Commission, pursuant to Fish and Game Code Sections 200 and 203, has the sole authority to regulate elk, bighorn sheep, and pronghorn antelope hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to elk, bighorn sheep, and pronghorn antelope tag allocations are consistent with Title 14. Therefore, the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

## Proposed Regulatory Language

Section 708.19, Title 14 CCR, is added to read:

### **§708.19. Preference Points and Tag Returns.**

(a) Notwithstanding any other provision of this Chapter, upon written request by the tag holder, the department may reinstate the preference points and refund the tag fees used to acquire any of the tags described in subsection (c). A refund for tag fees shall be subject to the nonrefundable processing fee specified in Section 702 with the request. This section shall only apply to tags issued through the big game drawing pursuant to section 708.14.

(b) The department has determined that holders of the tags described in subsection (c) may apply for reinstatement of the preference points, earn one preference point for the license year, and refund of tag fees by returning their unfilled tag along with a written request for them and stating that they did not harvest due to the statewide closure of all National Forests and other affected lands due to unprecedented wildfire in September 2020. Written requests, along with the unused tag, shall be submitted on or before May 1, 2021, to the department's License and Revenue Branch, P.O. Box 944209, Sacramento, CA 94244-2090. Applications postmarked after May 1, 2021, shall be denied.

#### (c) Big Game Species

##### (1) Elk

(A) Marble Mountains Apprentice (Hunt 408 - subsection 364(v)(1)(A))

(B) Marble Mountain antlerless (Hunt 301 – subsection 364(r)(3)(A))

(C) Marble Mountain bull (Hunt 302 – subsection 364(r)(3)(A))

(D) Northeastern CA Archery Only (Hunt 411 - subsection 364(w)(1)(A))

(E) Northeastern CA apprentice (Hunt 409 – subsection 364(v)(2)(A))

(F) Northeastern CA bull (Hunt 305 - subsection 364(s)(1)(A))

(G) Northwestern CA antlerless (Hunt 374 – subsection 364(r)(2)(A))

(H) Northwestern CA bull (Hunt 355 – subsection 364(r)(2)(A))

(I) Northwestern CA either sex (Hunt 483 – subsection 364(r)(2)(A))

(J) Siskiyou antlerless (Hunt 401 - subsection 364(r)(1)(A))

(K) Siskiyou bull (Hunt 300 – subsection 364(r)(1)(A))

(L) East Park Reservoir antlerless (Hunt 463 - subsection 364(u)(13)(A))

(M) East Park Reservoir bull (Hunt 461 – subsection 364(u)(13)(A))

(N) Lake Pillsbury Period 1 antlerless (Hunt 331 – subsection 364(u)(16)(A))

##### (2) Nelson Bighorn Sheep

(A) Zone 7 - White Mountains (subsection 362(a)(7))

##### (2) Pronghorn Antelope

(A) Likely Tables Period 2 buck (Hunt 732 - subsection 363(c)(2)(A))

(B) Lassen Period 2 buck (Hunt 742 – subsection 363(d)(2)(A))

(d) This section shall remain in effect only until June 30, 2021, and as of that date is repealed.

Note: Authority cited: Sections 219, 265, 331 and 1050, Fish and Game Code. Reference: Sections 331, 713 and 1050, Fish and Game Code.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Paul S. Weiland (SBN 237058)</b> <b>Nossaman LLP</b> <b>18101 Von Karman Ave., Suite 1800</b> <b>Irvine, CA 92612</b> TELEPHONE NO.: <b>949.833.7800</b> FAX NO. (Optional): <b>949.833.7878</b> E-MAIL ADDRESS (Optional): <b>pweiland@nossaman.com</b> ATTORNEY FOR (Name): <b>Plaintiffs/Petitioners</b>	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO</b> STREET ADDRESS: <b>720 9th Street</b> MAILING ADDRESS: <b>720 9th Street</b> CITY AND ZIP CODE: <b>Sacramento, CA 95814</b> BRANCH NAME: <b>Gordon D. Schaber County Courthouse</b>	
PLAINTIFF/PETITIONER: <b>ALMOND ALLIANCE OF CALIFORNIA, et al.</b> DEFENDANT/RESPONDENT: <b>CALIFORNIA FISH AND GAME COMMISSION, et al.</b>	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p style="text-align: center;"><b>NOTICE OF ENTRY OF JUDGMENT OR ORDER</b></p> <p><b>(Check one):</b>    <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b>      <input type="checkbox"/> <b>LIMITED CASE</b>            (Amount demanded exceeded \$25,000)      (Amount demanded was \$25,000 or less)</p> </div> <div style="width: 35%; text-align: center;"> <p>CASE NUMBER: <b>34-2019-80003216-CU-WM-GDS</b></p> </div> </div>	

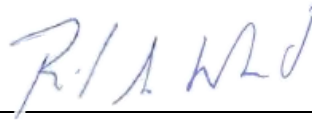
**TO ALL PARTIES :**

1. A judgment, decree, or order was entered in this action on (date): **November 30, 2020**
2. A copy of the judgment, decree, or order is attached to this notice.

Date: **December 10, 2020**

**Paul S. Weiland**

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)



(SIGNATURE)

**NOTICE OF ENTRY OF JUDGMENT OR ORDER**

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**FILED / ENDORSED**  
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By: *[Signature]* S. SLORT  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO

ALMOND ALLIANCE OF CALIFORNIA;  
CALIFORNIA ASSOCIATION OF PEST  
CONTROL ADVISERS; CALIFORNIA  
CITRUS MUTUAL; CALIFORNIA COTTON  
GINNERS AND GROWERS ASSOCIATION;  
CALIFORNIA FARM BUREAU  
FEDERATION; WESTERN  
AGRICULTURAL PROCESSORS  
ASSOCIATION; and WESTERN GROWERS  
ASSOCIATION,

Case No: 34-2019-80003216-CU-WM-GDS  
Assigned for all purposes to:  
Hon. James P. Arguelles, Dept. 17

~~PROPOSED~~ JUDGMENT ON  
PETITION FOR WRIT OF MANDATE

Petitioners/Plaintiffs,

vs.

CALIFORNIA FISH AND GAME  
COMMISSION, a California public agency;  
CALIFORNIA DEPARTMENT OF FISH AND  
WILDLIFE, a California public agency,

Respondents/Defendants,

and

XERCES SOCIETY FOR INVERTEBRATE  
CONSERVATION; DEFENDERS OF  
WILDLIFE; and CENTER FOR FOOD  
SAFETY,

Intervenors.

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1 On September 9, 2019, Petitioners Almond Alliance of California, California Association  
2 of Pest Control Advisers, California Citrus Mutual, California Cotton Ginners and Growers  
3 Association, California Farm Bureau Federation, Western Agricultural Processors Association,  
4 and Western Growers Association (collectively, "Petitioners") filed a Verified Petition for Writ  
5 of Mandate.

6 On October 4, 2019, Petitioners filed a First Amended Verified Petition for Writ of  
7 Mandate ("First Amended Petition") challenging the California Fish and Game Commission's  
8 June 2019 determination regarding a listing petition for the Crotch bumble bee (*Bombus*  
9 *crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus*  
10 *suckleyi*), and Western bumble bee (*Bombus occidentalis*) (collectively, "Bumble Bees") under  
11 the California Endangered Species Act ("CESA"), alleging that the Commission's actions  
12 violated its legal duty, acted without or in excess of its jurisdiction or abused its discretion,  
13 and/or failed to proceed in a manner required by law.

14 On January 27, 2020, Intervenors Xerces Society for Invertebrate Conservation,  
15 Defenders of Wildlife, and Center for Food Safety (collectively, "Intervenors") filed their  
16 Answer to the First Amended Petition ("Answer in Intervention"), submitted with Intervenors'  
17 Motion to Intervene.

18 On February 11, 2020, this Court granted Intervenors' Motion to Intervene and ordered  
19 that their Answer in Intervention be filed.

20 On June 8, 2020, Respondent California Fish and Game Commission and Real Party in  
21 Interest California Department of Fish and Wildlife (collectively, "Respondent") filed their  
22 Answer to the First Amended Petition.

23 Petitioners, Respondent, and Intervenors briefed the matter and the Court held a hearing  
24 on November 13, 2020.

25 On November 17, 2020, this Court issued a Final Ruling granting the petition, for the  
26 reasons set forth in the Final Ruling. The Final Ruling is attached hereto as Exhibit A and  
27 incorporated by reference.

28 ///

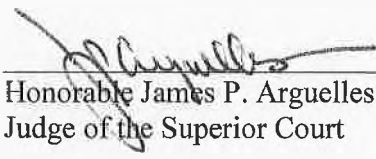


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**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

1. Judgment is entered in favor of Petitioners and against Respondent and Intervenor.
2. A peremptory writ of mandate shall be issued by the Clerk of this Court commanding the California Fish and Game Commission to rescind its determination that the listing of the Bumble Bees may be warranted and to provide notice that the Bumble Bees are not candidate species under CESA.
3. A memorandum of costs and a motion for attorneys' fees may be submitted by Petitioners in accordance with the California Rules of Court.

DATED: 30 NOV 2000

  
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Honorable James P. Arguelles  
Judge of the Superior Court



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# EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE / TIME</b>	November 13, 2020 / 10:00 a.m.	<b>DEPT. NO.</b>	17
<b>JUDGE</b>	James P. Arguelles	<b>CLERK</b>	Slort
<p><b>ALMOND ALLIANCE OF CALIFORNIA; CALIFORNIA ASSOCIATION OF PEST CONTROL ADVISERS; CALIFORNIA CITRUS MUTUAL; CALIFORNIA COTTON GINNERS AND GROWERS ASSOCIATION; CALIFORNIA FARM BUREAU FEDERATION; WESTERN AGRICULTURAL PROCESSORS ASSOCIATION; and WESTERN GROWERS ASSOCIATION,</b></p> <p style="text-align: center;"><b>Petitioners/Plaintiffs,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>CALIFORNIA FISH AND GAME COMMISSION, a California Public Agency; CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, a California Public Agency,</b></p> <p style="text-align: center;"><b>Respondents/Defendants,</b></p> <p><b>XERCES SOCIETY FOR INVERTEBRATE CONSERVATION; DEFENDERS OF WILDLIFE; and CENTER FOR FOOD SAFETY,</b></p> <p style="text-align: center;"><b>Intervenors.</b></p>		<p><b>Cases No.: 34-2019-80003216</b></p>	
<b>Nature of Proceedings:</b>		<b>Petition for Writ of Mandate – Final Ruling</b>	

The petition for writ of mandate is GRANTED.

The parties' requests for judicial notice are GRANTED.

Background

The California Endangered Species Act (CESA) is codified in Division 3, Chapter 1.5 of the Fish and Game Code, Section 2050 *et seq.*<sup>1</sup> CESA protects native species designated "endangered" or "threatened." An "endangered species" is a "native species or subspecies of a bird, mammal,

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<sup>1</sup> Undesignated statutory references shall be to the Fish and Game Code.

fish, amphibian, reptile, or plant which is in serious danger of becoming extinct[.]” (§ 2062.) A “threatened species” is a “native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future” absent protection. (See § 2067.)

Any interested person may petition Respondent California Fish and Game Commission (Commission) to add a species to one of these lists. (See § 2070 *et seq.*) Co-Respondent California Department of Fish and Wildlife (Department) evaluates the petition and recommends action that the Commission should take. (§§ 2071.5, 2073.5.) The Commission considers the Department’s recommendation and, after holding a public hearing, decides whether to accept or reject the petition. (§ 2074.2.) If the petition is accepted, then the species under consideration becomes a “candidate species,” i.e., “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that the Commission has formally noticed as being under review[.]” (§ 2068.) Additional procedures dictate whether the candidate species is listed as endangered or threatened. (See *California Forestry Assn. v. California Fish & Game Commission* [*California Forestry*] (2007) 156 Cal.App.4th 1535, 1542.) Subject to exceptions, persons may not import, export, take, possess, purchase or sell within the state endangered or threatened species. (See § 2080 *et seq.*)

In October 2018, Intervenors herein petitioned the Commission to add four species of bumble bees to its list of endangered species. In June 2019, the Commission accepted the listing petition and elevated the bumble bees to candidate-species status.

Petitioners now seek an administrative writ of mandate that sets aside the June 2019 listing decision. (See § 2076 [authorizing judicial review under Code of Civil Procedure Section 1094.5].) Petitioners argue that CESA does not authorize the Commission to designate insects such as bumble bees as endangered, threatened or candidate species.

The Commission and the Department (collectively “Respondents”) oppose. They argue that listing authority extends to insects and other invertebrates under the definition of “fish” at the beginning of the Fish and Game Code. Intervenors join in this argument and raise other arguments as well.

For reasons discussed below, the court agrees with Petitioners and grants the writ.

#### Standard of Review

Under Code of Civil Procedure Section 1094.5(b), the court inquires whether the agency proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. (Civ. Proc. Code § 1094.5(b).) The court independently reviews pure questions of law. (See *Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.)

## Discussion

The Commission's authority under CESA to list insects *vel non* presents a question of statutory interpretation.

"The rules governing statutory construction are well settled. [Courts] begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, [courts] turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, [courts] need go no further. However, when the language is susceptible of more than one reasonable interpretation, [courts] look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]" In addition, "every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect. [Citation.] Legislative intent will be determined so far as possible from the language of the statutes, read as a whole." [Citation.]

*(Doe v. Albany Unified School Dist. (2010) 190 Cal.App.4th 668, 675-676.)*

Petitioners argue that CESA is unambiguous in that it enumerates categories of wildlife that may be listed but does not include insects. (See *Haniff v. Superior Court (2017) 9 Cal.App.5th 191, 201* [""[W]here a statute enumerates things upon which it is to operate it is to be construed as excluding from its effect all those not expressly mentioned""].) Petitioners thus caution the court not to read into CESA a term that the Legislature intended to exclude. (See *Security Pacific Nat'l Bank v. Wozab (1990) 51 Cal.3d 991, 998* [noting "the cardinal rule of statutory construction that courts must not add provisions to statutes"].)

Respondents and Intervenors counter that CESA's definitions for endangered, threatened and candidate species must be harmonized with other definitions in the Fish and Game Code. In particular, they point out that Section 45 defines "fish" to include "invertebrates."<sup>2</sup> Section 2 further provides that "[u]nless the provisions or the context otherwise requires, the definitions in this chapter govern the construction of this code and all regulations adopted under this code." Because bumble bees and other insects are invertebrates, Respondents and Intervenors argue that the Commission was entitled to list the bumble bees in question as fish.

To support their argument, Respondents and Intervenors cite *California Forestry, supra*. That case involved a successful petition to list two evolutionarily distinct units of coho salmon. The Commission listed one unit as endangered and another as threatened. The Court of Appeal held that the phrase "species or subspecies" as it appears in CESA's definitions of "endangered

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<sup>2</sup> Section 45 reads, "'Fish' means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof."

species” and “threatened species” encompassed evolutionarily distinct units. Because the phrase “species or subspecies” was ambiguous, a liberal construction supporting CESA’s remedial purposes was warranted. The Commission’s scientific expertise and longstanding policy also supported the construction.

In reaching its conclusion, the *California Forestry* court rejected an argument that, in making its listing decision, the Commission should not have considered the effect of hatchery salmon on wild salmon:

[T]he Legislature intended that “wild fish,” as opposed to hatchery fish, be protected under the CESA. **While the definition of threatened species and endangered species in the CESA includes “native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant” (§§ 2062, 2067), the Legislature has narrowed the definition of “fish” to mean “wild fish” (§ 45).** We therefore find inapposite plaintiffs’ reliance on federal case law interpreting the F[ederal Endangered Species Act] and deeming the Secretary of Commerce’s decision to list only “naturally spawned” coho salmon (as opposed to “hatchery spawned” coho salmon) “arbitrary and capricious.” [Citation.] Leaving aside whether that case was correctly decided [citation], “fish” in the FESA is not defined with reference to “wild fish” [citation]. Therefore, the Commission and the Department did not err in analyzing both wild coho salmon and hatchery coho salmon when determining whether the two coho units were entitled to protection under the CESA.

(*California Forestry*, p. 1552, boldface added, underlining omitted.) In Respondents’ and Intervenor’s view, the same reasoning requires this court to uphold the Commission’s listing of bumble bees: because the definition of “fish” in Section 45 includes invertebrates, and because bumble bees are invertebrates, bumble bees may be listed under CESA as fish. As Intervenor recognizes, though, a counterintuitive mental leap is required to conclude that bumble bees may be protected as fish. Harmonizing the term “fish” as it is used in CESA with the term “wild fish” as used in Section 45 does not require the same exertion.

In context, the word “invertebrates” as it appears in Section 45’s definition of “fish” clearly denotes invertebrates connected to a marine habitat, not insects such as bumble bees. (See *Doe, supra*, p. 676 [where the statutory language is clear, the court goes no further].)<sup>3</sup> For that reason, the Commission exceeded its authority when it designated the bumble bees in question as candidate species.

But even if the term “invertebrates” as it appears in Section 45 created an ambiguity about CESA’s application to insects such as bumble bees, extrinsic interpretive aids would still entitle

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<sup>3</sup> At oral argument, counsel for Respondents asserted that 90 percent of all animal species are invertebrates. Yet, “invertebrates” is just one term in a series that define “fish.” It is unlikely that the Legislature meant for a single word in a series defining the term “fish” to capture such an extraordinarily broad group of animal life.

Petitioners to writ relief. First, the parties dispute the import of CESA's legislative history. While CESA was under consideration as Assembly Bill 3309 (1984),<sup>4</sup> the Department provided the Legislature with a bill summary and analysis indicating that CESA's predecessor protected invertebrates. The Department asked the Legislature to include invertebrates within CESA's definitions of endangered and threatened species "to remove any doubts as to the Commission's authority to designate insects as endangered or threatened[.]" (See *Intervenors' RJN*, Exh. A, p. 4; see *id.*, Exh. A, p. 5 ["Including the term invertebrates in the definitions of endangered and threatened species would help eliminate confusion on the part of the Office of Administrative Law] over the Commission's authority under the Act, but does not add any new authority to that which the A. G. indicates already exists"].)<sup>5</sup>

The final version of AB 3309 deleted the term "invertebrates" from definitions of endangered and threatened species appearing in earlier drafts. In its enrolled bill report to the Governor, the Department changed course and characterized the deletion as the removal of an unnecessary change that would have sown confusion. (See *id.*, Exh. B, p. 4 ["For example, to have included the term would have required that, for consistency, all other references in the Fish and Game Code to the various groups of animals be amended to add the term invertebrates, as necessary"].) *Intervenors* ask the court to defer to this characterization and the Department's other statements to the Legislature while AB 3309 was under consideration. But a Senate Committee analyzing the penultimate version of the bill, in which the term "invertebrates" was deleted, wrote that "[u]nlike federal law, the bill would exclude all invertebrates from eligibility for listing as threatened or endangered species." (Reply *RJN*, Exh. 2, p. ARC-23b.)<sup>6</sup> Although a court construing a statute may consider an executive agency's enrolled bill report, it properly defers to the enacting Legislature's own statements of its intent. (See *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1218, fn. 3 ["Although these reports certainly do not take precedence over more direct windows into legislative intent such as committee analyses, and cannot be used to alter the substance of legislation, they may be as here 'instructive' in filling out the picture of the Legislature's purpose"]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 41.) Consequently, the court does not defer to the Department's statements in the enrolled bill report in the face of other, clear evidence that the Legislature did not intend for CESA to protect invertebrates categorically.

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<sup>4</sup> CESA was drawn from two bills, AB 3309 and AB 3270. (See Section 2050 (West 2013), Historical and Statutory Notes.)

<sup>5</sup> The "doubts" and "confusion" apparently stem from the OAL's determination in 1980 that the Commission lacked authority under then-existing legislation to list two species of butterflies as "fish" under Section 45. (See Opening Brf. at 14.) Petitioners cite this determination as further evidence that the "fish" described in Section 45 do not include insects such as butterflies.

<sup>6</sup> The penultimate version of AB 3309 would have required the Department to study the necessity and feasibility of including invertebrates in CESA in the future, but that provision was also excised from the final version. (Compare Reply *RJN*, Exh. 2 with Exh. 6.)

In 1998, the Attorney General was asked for a formal opinion about CESA's application to insects. The Attorney General opined that the answer was "no." (See 81 Ops.Atty.Gen. 222; 1998 Cal. AG LEXIS 111.)<sup>7</sup> Presumed to be aware of the Attorney General's opinion, the Legislature did not subsequently amend CESA's definitions of threatened or endangered species. Although not binding, the Attorney General's opinion that CESA does not cover insects is entitled to "great weight," especially in the absence of clear case authority. (See *Sonoma County Employees' Retirement Assn. v. Superior Court* (2011) 198 Cal.App.4th 986, 996.) Combined with CESA's legislative history, the Attorney General's opinion makes a very strong case that the Commission was not authorized to list bumble bees as it did.

The Commission argues that its longstanding interpretation of CESA permits the listing of insects as fish under Section 45. Under *Yamaha Corp. of Am. v. State Bd. of Equalization* (1999) 73 Cal.App.4th 338, 350-351, two of several factors supporting an agency's interpretation of a statute are the interpretation's consistency and duration. Citing its listings of freshwater shrimp, the Shasta crayfish and the Trinity bristle snail, the Commission argues that, although these species are not commonly considered "fish," they were listed because they are crustaceans, mollusks and/or invertebrates within the definition of "fish" in Section 45. The Commission further notes that the Trinity bristle snail, which was listed in 1980 pursuant to predecessor legislation, is a terrestrial species. Hence, the Commission argues that it has consistently interpreted Section 45 to inform listings under CESA, and that its interpretation extends CESA to invertebrates or other "fish" that do not inhabit a marine environment.

The Commission acknowledges, however, that the only time it attempted to list insects was under the same predecessor statute, and the attempt was unsuccessful. Notwithstanding that the OAL rejected the listing as unauthorized, the Commission argues that it never "acquiesced" to the OAL's view and has consistently construed its authority as extending to terrestrial invertebrates. But given that the Commission's interpretation did not prevail under the predecessor legislation, and given that the Legislature subsequently considered but rejected extending CESA to invertebrates, it is difficult to see how the Commission's view, even if consistent and longstanding, is probably the correct one.

The Commission also requests judicial deference to its scientific expertise. An agency's expertise is an important factor when considering the agency's construction of a statute it enforces. (See *Yamaha*, p. 353.) Given the "taxonomic complexity" that CESA and Section 45

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<sup>7</sup> The Attorney General wrote: "These definitions [of endangered, threatened and candidate species] limit the application of CESA to birds, mammals, fish, amphibians, reptiles, and plants. Insects do not fall within any of these categories. In zoological terms, insects comprise the Insecta class of the phylum Arthropoda. (Webster's Third New Internat. Dict. (1971) p. 1168.) Since they are not within the governing definitions contained in CESA, insects are not eligible for listing as threatened or endangered species thereunder. While the last sentence of section 2062 and of section 2067 'grandfather' certain designations made prior to 1985, no insects were so designated. Therefore, we need not inquire whether insects were eligible for listing prior to 1985." (1998 Cal. AG LEXIS 111, \*6-7, footnote omitted.)



present, (see Respondents' Opp., Part III-B), the Commission argues that such deference is warranted in the current action.

The court does not dispute that applying CESA and other provisions in the Fish and Game Code requires expertise that the Commission possesses and which the court lacks. And if the Legislature had not made clear in the ways described above that CESA does not protect insects in particular, or invertebrates as a distinct group, the Commission's expertise might hold more sway. In the end, however, the court must render an interpretation that gives effect to the Legislature's intent, not a learned agency's opinion. Because the Commission's opinion of its authority under CESA is at odds with the Legislature's, the Commission's expertise does not command the deference sought.

Furthermore, the Commission is not the only agency with experts administering CESA. The Department is charged with making listing recommendations to the Commission and enforcing prohibitions that protect listed species. (See § 2080, 2081(d).) Pursuant to its enforcement obligations, the Department in 1998 promulgated a regulation governing the "take" of wildlife protected by CESA and other legislation. Subject to exceptions, Title 14, Section 783.1(a) of the California Code of Regulations prohibits the "import into this State, export out of this State or take, possess, purchase, or [sale] within this State, [of] any endangered species, threatened species ... ." Notably, subdivision (d) of the same section provides: "The take of insects and other invertebrates that are not fish as defined in the Fish and Game Code is not prohibited." However one reads it, this language is not consistent with the construction that Respondents and Intervenors now tender, namely that the term "fish" as defined in the Fish and Game Code encompasses all invertebrates, including insects.

A better argument, although one that court ultimately rejects as well, is that the Legislature itself has interpreted CESA to reach insects. Enacted in 1988, provisions codified in Section 2582 impose civil liability "upon any person pursuant to this chapter for ... [enumerated] acts done for profit or personal gain." The cited "chapter" is 6.5, which is entitled "Control of Illegally Taken Fish and Wildlife." Section 2582 refers to endangered and threatened species under CESA, as well as other wildlife, and in subdivision (a)(2) creates civil liability against those who:

Unlawfully export, import, transport, sell, possess, receive, acquire, or purchase, or unlawfully assist, conspire, or aid in the importing, exporting, transporting sale, possession, receiving, acquisition, or purchasing of **any plants, insects, or other species listed pursuant to the California Endangered Species Act** ... which are taken or possessed in violation of this code or the regulations adopted pursuant to this code. (Emphasis added.)

Neither Respondents nor Intervenors argue that these provisions expressly amended CESA. Nor does the court construe them as an express grant of authority to list species under CESA. Rather, Respondents argue that Section 2582 constitutes the Legislature's view of CESA's meaning, and in particular CESA's scope vis-à-vis insects.

While “the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts” [citation], “if the courts have not yet finally and conclusively interpreted a statute and are in the process of doing so, a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration. [Citation.] But even then, ‘a legislative declaration of an existing statute's meaning’ is but a factor for a court to consider and ‘is neither binding nor conclusive in construing the statute.’ [Citations.] This is because the ‘Legislature has no authority to interpret a statute. That is a judicial task. The Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But it has no legislative authority simply to say what it *did* mean.’ [Citation.]” [Citations.]

(*National Asian American Coalition v. Newsom* (2019) 33 Cal.App.5th 993, 1011-1012, italics in original.) The Legislature that enacted CESA expressed its intent not to protect invertebrates categorically. Furthermore, insects do not fall within any of the categories of wildlife that CESA was intended to protect. Consequently, to the extent Section 2582(a)(2) is a subsequent Legislature’s view of CESA’s application to insects, the court does not adopt that view as the proper construction.

Intervenors argue that Section 2582 constitutes an implied amendment of CESA’s definitions of endangered and threatened species. Typically, though, a later-enacted statute impliedly amends existing legislation where the two enactments contain substantively irreconcilable provisions. (See *Peatros v. Bank of America* (2000) 22 Cal.4th 147, 167-169 [where National Bank Act of 1864 immunized from liability banks dismissing their officers, but later enacted Civil Rights Act of 1964 and Age Discrimination and Employment Act of 1967 created liability for certain dismissals, the latter impliedly amended the former by limiting immunity]; *Turner v. Association of American Medical Colleges* (2011) 193 Cal.App.4th 1047, 1053-1054 [later-enacted attorney fee-shifting provisions in Civil Code Section 52 and 54.3 created an implied exception to the fee-shifting provisions in Civil Code Section 55].)

When it enacted Section 2582, the Legislature did not purport to grant authority under CESA. Instead, it at most potentially declared insects to be among the animal life subject to CESA’s protections. Put another way, to the extent the Legislature that enacted Section 2582 was interpreting CESA, which is far from clear, because that interpretation was incorrect, the court does not adopt it. (See *City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, 309 [Legislature’s incorrect description of an enactment as a declaration of existing law was not entitled to deference]; *Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40 [“The declaration of a later Legislature is of little weight in determining the relevant intent of the Legislature that enacted the law.[. citations] ... especially ... when, as here, such declared intent is without objective support in either the language or history of the legislation”].)

At the hearing, counsel for Intervenors argued that, even if Section 2582(a)(2) constitutes the Legislature’s incorrect interpretation of CESA as it existed in 1988, the consequence is merely

that Section 2582(a)(2) may not be given retroactive effect. According to Intervenor, the reference to insects in Section 2582(a)(2) still constitutes an implied amendment that has operated prospectively since its passage in 1988. Section 2582, however, only creates civil liability for violations of other legal rules. Neither Respondents nor Intervenor cite anything in the legislative history suggesting that Section 2582 was intended to broaden CESA's reach, and the court does not discern such an intent from Section 2582(a)(2) itself. Furthermore, and as noted above, both the Attorney General and the Department construed CESA in 1998 to exclude insects.

Finally, Respondents and Intervenor argue that CESA's remedial purposes compel a broad interpretation of the Commission's listing authority. The court readily agrees that CESA is construed broadly to achieve its purposes. (See *Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1563.) Here, however, the absence of authority to list insects under CESA, either as fish or otherwise, is clear. As a result, CESA's purposes do not confer authority that the Legislature withheld.

Disposition

The petition is granted.

Pursuant to Rule of Court 3.1312, counsel for Petitioners shall lodge for the court's signature a judgment to which this ruling is attached as an exhibit.

Unless otherwise ordered, any administrative record, exhibit, deposition, or other original document offered in evidence or otherwise presented at trial, will be returned at the conclusion of the matter to the custody of the offering party. The custodial party must maintain the administrative record and all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

SO ORDERED.

Dated: November 17, 2020



A handwritten signature in black ink, appearing to read "James P. Arguelles", written over a horizontal line.

Hon. James P. Arguelles  
California Superior Court Judge,  
County of Sacramento

**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

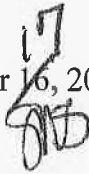
I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled **Motion to Intervene – Final Ruling** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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*Citrus Mutual; California Cotton Ginners and*  
*Growers Association; California Farm Bureau*  
*Federation; Western Agricultural Processors*  
*Association; and Western Growers Association*

Dated: November 16, 2020



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*California Department of Fish and Wildlife*  
*Attorneys for Intervenors Xerxes Society for*  
*Invertebrate Conservation, Defenders of*  
*Wildlife, and Center for Food Safety*

Superior Court of California,  
County of Sacramento

By: S. Slort,   
Deputy Clerk

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of Orange, State of California. I am over the age of 18 and  
4 am not a party to the within action; my business address is c/o Nossaman LLP, 18101 Von  
Karman Avenue, Suite 1800, Irvine, CA 92612.

5 On December 10, 2020, I served the foregoing **NOTICE OF ENTRY OF JUDGMENT**  
6 **OR ORDER** on parties to the within action as follows:

7  (By U.S. Mail) On the same date, at my said place of business, Copy enclosed in a sealed  
8 envelope, addressed as shown on the attached service list was placed for collection and  
9 mailing following the usual business practice of my said employer. I am readily familiar  
10 with my said employer's business practice for collection and processing of  
correspondence for mailing with the United States Postal Service, and, pursuant to that  
practice, the correspondence would be deposited with the United States Postal Service,  
with postage thereon fully prepaid, on the same date at Irvine, California.

11  (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e),  
12 to the number(s) listed on the attached sheet. Said transmission was reported complete  
13 and without error. A transmission report was properly issued by the transmitting  
14 facsimile machine, which report states the time and date of sending and the telephone  
number of the sending facsimile machine. A copy of that transmission report is attached  
hereto.

15  (By Overnight Service) I served a true and correct copy by overnight delivery service for  
16 delivery on the next business day. Each copy was enclosed in an envelope or package  
17 designated by the express service carrier; deposited in a facility regularly maintained by  
the express service carrier or delivered to a courier or driver authorized to receive  
documents on its behalf; with delivery fees paid or provided for; addressed as shown on  
the accompanying service list.

18  (By Electronic Service) By emailing true and correct copies to the persons at the  
19 electronic notification address(es) shown on the accompanying service list. The  
20 document(s) was/were served electronically and the transmission was reported as  
complete and without error.

21 Executed on December 10, 2020.

22  (STATE) I declare under penalty of perjury under the laws of the State of California that  
23 the foregoing is true and correct.

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25 Amy R. Taylor

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**SERVICE LIST**

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Wildlife, and Center for Food Safety*

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <b>Paul S. Weiland (SBN 237058)</b> Nossaman LLP 18101 Von Karman Ave., Suite 1800 Irvine, CA 92612 TELEPHONE NO.: <b>949.833.7800</b> FAX NO. <i>(Optional):</i> <b>949.833.7878</b> E-MAIL ADDRESS <i>(Optional):</i> <b>pweiland@nossaman.com</b> ATTORNEY FOR <i>(Name):</i> <b>Plaintiffs/Petitioners</b>	<b>FOR COURT USE ONLY</b>				
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO</b> STREET ADDRESS: <b>720 9th Street</b> MAILING ADDRESS: <b>720 9th Street</b> CITY AND ZIP CODE: <b>Sacramento, CA 95814</b> BRANCH NAME: <b>Gordon D. Schaber County Courthouse</b>					
PLAINTIFF/PETITIONER: <b>ALMOND ALLIANCE OF CALIFORNIA, et al.</b> DEFENDANT/RESPONDENT: <b>CALIFORNIA FISH AND GAME COMMISSION, et al.</b>					
<table style="width:100%;"> <tr> <td style="text-align: center;"><b>NOTICE OF ENTRY OF JUDGMENT OR ORDER</b></td> <td style="vertical-align: top; padding-left: 20px;">                             CASE NUMBER:  <b>34-2019-80003216-CU-WM-GDS</b> </td> </tr> <tr> <td style="padding-left: 20px;"> <b>(Check one):</b>     <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b>     <input type="checkbox"/> <b>LIMITED CASE</b>                              (Amount demanded     (Amount demanded was                              exceeded \$25,000)     \$25,000 or less)                         </td> <td></td> </tr> </table>		<b>NOTICE OF ENTRY OF JUDGMENT OR ORDER</b>	CASE NUMBER: <b>34-2019-80003216-CU-WM-GDS</b>	<b>(Check one):</b> <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded     (Amount demanded was exceeded \$25,000)     \$25,000 or less)	
<b>NOTICE OF ENTRY OF JUDGMENT OR ORDER</b>	CASE NUMBER: <b>34-2019-80003216-CU-WM-GDS</b>				
<b>(Check one):</b> <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded     (Amount demanded was exceeded \$25,000)     \$25,000 or less)					

**TO ALL PARTIES :**

1. A judgment, decree, or order was entered in this action on *(date):* **November 30, 2020**
2. A copy of the judgment, decree, or order is attached to this notice.

Date: December 10, 2020

**Paul S. Weiland**

(TYPE OR PRINT NAME OF  ATTORNEY      PARTY WITHOUT ATTORNEY)

▶

(SIGNATURE)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO

ALMOND ALLIANCE OF CALIFORNIA;  
CALIFORNIA ASSOCIATION OF PEST  
CONTROL ADVISERS; CALIFORNIA  
CITRUS MUTUAL; CALIFORNIA COTTON  
GINNERS AND GROWERS ASSOCIATION;  
CALIFORNIA FARM BUREAU  
FEDERATION; WESTERN  
AGRICULTURAL PROCESSORS  
ASSOCIATION; and WESTERN GROWERS  
ASSOCIATION,

Petitioners/Plaintiffs,

vs.

CALIFORNIA FISH AND GAME  
COMMISSION, a California public agency;  
CALIFORNIA DEPARTMENT OF FISH AND  
WILDLIFE, a California public agency,

Respondents/Defendants,

and

XERCES SOCIETY FOR INVERTEBRATE  
CONSERVATION; DEFENDERS OF  
WILDLIFE; and CENTER FOR FOOD  
SAFETY,

Intervenors.

Case No: 34-2019-80003216-CU-WM-GDS

Assigned for all purposes to:  
Hon. James P. Arguelles, Dept. 17

~~PROPOSED~~ WRIT OF MANDATE TO  
CALIFORNIA FISH AND GAME  
COMMISSION





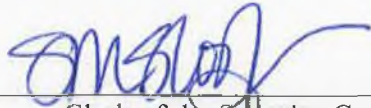
1 To: Respondent California Fish and Game Commission:

2 WHEREAS, on Nov. 30, 2020 Judgment was entered in this action, ordering that a  
3 Peremptory Writ of Mandamus be issued from this Court to the California Fish and Game  
4 Commission.

5 **THEREFORE, PURSUANT TO THE JUDGMENT ENTERED IN THIS ACTION,**  
6 **YOU ARE HEREBY COMMANDED** to rescind your determination that the listing of the  
7 Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley  
8 cuckoo bumble bee (*Bombus suckleyi*), and Western bumble bee (*Bombus occidentalis*)  
9 (collectively, "Bumble Bees") may be warranted under the California Endangered Species Act,  
10 and to provide notice that the Bumble Bees are not candidate species under the California  
11 Endangered Species Act.

12 **YOU ARE FURTHER COMMANDED** to make a return to this Writ of Mandamus  
13 before this Court within 90 days from the date a copy of this Writ is served on you, showing  
14 what you have done to comply with this writ of mandate.

15  
16 DATED: Nov. 30, 2020

17   
18 Clerk of the Superior Court  
19 S.M. Stort for  
20 Lloyd Connelly  
21 Clerk of the Court

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**PROOF OF SERVICE**

The undersigned declares:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman LLP, 18101 Von Karman Avenue, Suite 1800, Irvine, CA 92612.

On November 25, 2020, I served the foregoing **NOTICE OF LODGING [PROPOSED] JUDGMENT AND [PROPOSED] WRIT OF MANDATE TO CALIFORNIA FISH AND GAME COMMISSION** on parties to the within action as follows:

(By U.S. Mail) On the same date, at my said place of business, copy enclosed in a sealed envelope, addressed as shown on the attached service list was placed for collection and mailing following the usual business practice of my said employer. I am readily familiar with my said employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and, pursuant to that practice, the correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, on the same date at Irvine, California.

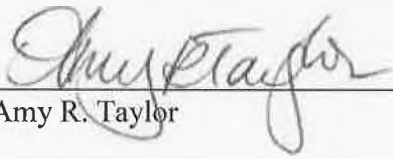
(By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), to the number(s) listed on the attached sheet. Said transmission was reported complete and without error. A transmission report was properly issued by the transmitting facsimile machine, which report states the time and date of sending and the telephone number of the sending facsimile machine. A copy of that transmission report is attached hereto.

(By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

(By Electronic Service) By emailing true and correct copies to the persons at the electronic notification address(es) shown on the accompanying service list. The document(s) was/were served electronically and the transmission was reported as complete and without error.

Executed on November 25, 2020.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Amy R. Taylor

**SERVICE LIST**

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*Attorneys for Intervenors Xerces Society for  
Invertebrate Conservation, Defenders of  
Wildlife, and Center for Food Safety*

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of Orange, State of California. I am over the age of 18 and  
4 am not a party to the within action; my business address is c/o Nossaman LLP, 18101 Von  
Karman Avenue, Suite 1800, Irvine, CA 92612.

5 On December 10, 2020, I served the foregoing **NOTICE OF ENTRY OF JUDGMENT**  
6 **OR ORDER** on parties to the within action as follows:

7  (By U.S. Mail) On the same date, at my said place of business, Copy enclosed in a sealed  
8 envelope, addressed as shown on the attached service list was placed for collection and  
9 mailing following the usual business practice of my said employer. I am readily familiar  
10 with my said employer's business practice for collection and processing of  
correspondence for mailing with the United States Postal Service, and, pursuant to that  
practice, the correspondence would be deposited with the United States Postal Service,  
with postage thereon fully prepaid, on the same date at Irvine, California.

11  (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e),  
12 to the number(s) listed on the attached sheet. Said transmission was reported complete  
13 and without error. A transmission report was properly issued by the transmitting  
14 facsimile machine, which report states the time and date of sending and the telephone  
number of the sending facsimile machine. A copy of that transmission report is attached  
hereto.

15  (By Overnight Service) I served a true and correct copy by overnight delivery service for  
16 delivery on the next business day. Each copy was enclosed in an envelope or package  
17 designated by the express service carrier; deposited in a facility regularly maintained by  
the express service carrier or delivered to a courier or driver authorized to receive  
documents on its behalf; with delivery fees paid or provided for; addressed as shown on  
the accompanying service list.

18  (By Electronic Service) By emailing true and correct copies to the persons at the  
19 electronic notification address(es) shown on the accompanying service list. The  
20 document(s) was/were served electronically and the transmission was reported as  
complete and without error.

21 Executed on December 10, 2020.

22  (STATE) I declare under penalty of perjury under the laws of the State of California that  
23 the foregoing is true and correct.

24   
25 Amy R. Taylor

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**SERVICE LIST**

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