

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.