

State of California
Fish and Game Commission
Final 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 Statements of Reasons

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| (a) Initial Statement of Reasons | Date: | November 14, 2020 |
| (b) Date of Final Statement of Reasons | Date: | February 11, 2021 |

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 10, 2020	Location: Teleconference
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(b) Discussion Hearing

Date: January 12, 2021	Location: Teleconference
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(c) Adoption Hearing

Date: February 10, 2021	Location: Teleconference
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III. Update

The proposed language in the Initial Statement of Reasons inadvertently included a numbering error that has been corrected here.

IV. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Responses to public comments, oral or written, regarding proposed regulatory changes received through February 10, 2021 are included as Attachment A.

V. Location and Index of Rulemaking

A rulemaking with attached file index is maintained at:

California Fish and Game Commission
1416 9th Street
Sacramento, CA 95814

VI. Location of Department Files:

California Department of Fish and Wildlife
1010 Riverside Parkway
West Sacramento, CA 95605

VII. 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 led 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. Even if 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 were reissued to hunters, the license system would have to be programmed to remove the tags issued in 2020 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 2020 tags when 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 in 2020, 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.

VIII. 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, bighorn sheep, 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.

UPDATED 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, to receive a reinstatement of the preference points used to obtain the tag through the drawing, and to 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. This will promote fairness to tag holders who lost opportunities to hunt and provides a refund to the high tag costs and reinstatement of preference points allowing them another chance to obtain a premium tag in the future.

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.

UPDATE

The proposed language in the Initial Statement of Reasons inadvertently included a numbering error that has been corrected here.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.