

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 203, 219, 265, 331, 460, 1050, 3051, 3452, 3453, 3953 and 4334, Fish and Game Code and to implement, interpret or make specific Sections 200, 203, 203.1, 255, 265, 331, 332, 458, 459, 460, 713, 1050, 3051, 3452, 3453, 3953 and 4334; Title 14, California Code of Regulations, relating to big game mammal hunting regulations.

Informative Digest/Policy Statement Overview

The California Department of Fish and Wildlife (Department) manages deer, bighorn sheep, pronghorn antelope, and elk resources in California. Deer hunting tags, bighorn sheep hunting tags, pronghorn antelope hunting tags, and elk hunting tags are required to hunt these species in California. The Department distributes hunting tags for certain deer, bighorn sheep, pronghorn antelope, and elk annually via the big game drawing. Public demand for deer, bighorn sheep, pronghorn antelope, and elk hunting tags exceeds the available opportunities; therefore, a modified preference point system (currently Section 708.14) provides preference to hunters who have applied for, but not received, tags in past drawings. Each year a hunter applies for a premium deer, bighorn sheep, pronghorn antelope, or elk 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 deer, bighorn sheep, pronghorn antelope, and elk tags are 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 2021 season trails the catastrophic 2020 fire season, and like 2020, has caused unprecedented public land closures, including the temporary closure of all national forests in California. These closures have resulted in a loss of opportunity for hunters who had “once in a lifetime” deer, bighorn sheep, pronghorn antelope, or elk hunting tags. Hunters used many years of accumulated preference points (in many cases 19 years of preference points) to obtain the required tags for the hunts specified in the proposed regulation.

Regulations to address conditions resulting from the 2021 fire season are needed to allow hunters to return their first-choice tags after the season starts. The Department is proposing to amend Section 708.14, subsections (j) (for deer) and (k) (for bighorn sheep, pronghorn antelope, and elk) to allow hunters who lost their opportunity to hunt due to land closures caused by fires to return certain deer, bighorn sheep, pronghorn antelope, and elk tags for reinstatement of the preference points used to obtain the tag through the drawing and earn one preference point for the license year after the start of the hunting season. The eligibility for tag refund continues to apply only to the elk, bighorn sheep, and pronghorn antelope tags. Hunters who request a refund would be required to pay the \$31.93 nonrefundable big game tag return processing fee specified in Section 702.

The purpose of the proposed regulation is to authorize the Department to consider reinstatement of preference points and award one preference point for the license year for certain deer tags and to refund tag fees, reinstate preference points, and award one preference point for the license year for bighorn sheep, pronghorn antelope, and elk hunts whose hunt zones are inaccessible for sixty-six percent (66%) or more of the season as a

result of public land closures. Considering that public lands access restrictions have changed during the preparation of these regulatory documents (fall 2021), this regulation aims to function retroactively, whereby written requests for point reinstatements (and refunds, if applicable) would need to be postmarked before May 1, 2022 for consideration. The regulation would act prospectively for the 2022 license year and beyond, and require postmark before February 28 of that license year.

The proposal would affect hunters who were drawn for the following deer, bighorn sheep, pronghorn antelope, and elk hunts:

Deer

- Those deer zones defined in Title 14, Section 708.1 and described as Premium Deer Hunt Tags
 - The approximate number of premium deer hunt tags eligible for points re-instatement (as of September 16, 2021): **15,037** across 14 archery zones and 6 general zones

Bighorn Sheep

- Those zones defined in Title 14, Section 362
 - The approximate number of bighorn sheep hunt tags affected (as of September 16, 2021): **0**. No sheep hunts are affected by known public land closures and thus the proposed regulation.

Pronghorn Antelope

- Those zones defined in Title 14, section 363
 - The approximate number of pronghorn antelope hunt tags affected (as of September 16, 2021): **106**

Elk

- Those zones defined in Title 14, Section 364
 - The approximate number of elk hunt tags affected (as of September 16, 2021): **113** across 7 general zones, 1 archery zone, and 2 apprentice zones

Benefits of the regulations

The proposed regulation will authorize the Department to reinstate preference points and award one additional preference point for the license year for certain deer tags, and 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 public land closures.

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 deer, elk, bighorn sheep, and pronghorn antelope hunting opportunities will have the ability to

have their preference points reinstated, earn a preference point for the license year, and have another chance to obtain a deer, 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 deer, 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 deer, 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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Wednesday, December 15, 2021, at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Sacramento, California on Thursday, February 17, 2022 at 8:30 a.m., or as soon thereafter as the matter may be heard. The specific location for this meeting is still being determined. As soon as this information is available, but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing an exact location. The continuation notice will also be published in the California Regulatory Notice Register and published on the Commission's website.

It is requested, but not required, that written comments be submitted on or before February 17, 2022 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on February 11, 2022. All comments must be received no later than February 17, 2021, during the hearing. If you would like copies of any modifications to this proposal, please include your name and email or mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, P.O. Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the

regulatory process to Melissa Miller-Henson or David Thesell at the preceding address or phone number. **Brad Burkholder, Environmental Program Manager, has been designated to respond to questions on the substance of the proposed regulations. He can be reached at (916) 373-6619 or via email at Brad.Burkholder@wildlife.ca.gov.**

Availability of Modified Text

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

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

Impact of Regulatory Action/Results of the Economic Impact Assessment

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

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

The proposed action will not have 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 eligible for refund for bighorn sheep for the 2021 license year (zero), pronghorn sheep (100), and elk (109) over the entire state, this proposal is economically neutral to business. Given the recent timing of wildfires and potentials for public land closures, the impacts for the 2022 license year are anticipated to be similar.

- (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.

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. Individuals may receive refunds for previously paid tag fees that could vary from \$45.60 for a resident bighorn sheep tag (includes base fee and surcharge), to \$159.91 for a resident pronghorn antelope tag, to \$475.20 for a resident elk tag. A \$31.93 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 209 hunters could be eligible for tag refunds. Hunters would be required to pay the \$31.93 nonrefundable big game tag return processing fee specified in Section 702. There are no big horn sheep hunters, 100 pronghorn antelope (including 6 apprentice hunters), 109 elk hunters (including four apprentice hunters), 0 bighorn sheep hunters, and 38 pronghorn antelope hunters who could potential request tag refund. At most, the Department would be required to issue 209 tag refunds for up to a net total of approximately \$61,120.

Additionally, the Department anticipates that the projected increase in the total number of refunds and point reinstatements may exceed staff time currently budgeted for those job tasks. In the current hunt season, the total staff time/costs redirected to processing tag refunds and/or point reinstatements is estimated to exceed a typical year by \$291,657.

The combined cost estimates total \$352.77.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

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

Consideration of Alternatives

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

FISH AND GAME COMMISSION

David Thesell
Program Manager

Dated: November 2, 2021