



Tracking Number: (2021-018_)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: Tom Wheeler, Environmental Protection Information Center

Address: [REDACTED]

Telephone number: [REDACTED]

Email address: [REDACTED]

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested:

3.

Fish and Game Code sections 3503.5 and 3800 provide ample authority for the Commission to issue the requested regulations. While section 3503.5 ordinarily prohibits taking of "any birds in the orders Falconiformes or Strigiformes," the same section provides an explicit exception for any regulation adopted pursuant thereto the code. The Department of Fish and Wildlife already understand that this prohibition on take is not complete, as the Department currently issues take scientific collection permits for species otherwise protected by this section. The same logic applies for section 3800. Section 3800 prohibits the taking of nongame birds except "in accordance with regulations of the commission."

The Fish and Game Code should also be read in its entirety, as a whole, and to give effect to every word of the statute. Further, to the extent possible, the code should be harmonized and not read as creating a conflict. In reading the Fish and Game Code together, as a whole, the Commission's authority likewise becomes clearer. Fish and Game Code § 200 gives the Commission broad authority to regulate the taking of wildlife within the state.

4. Overview (Required) - Summarize the proposed changes to regulations: The proposed regulation would allow for the taking of barred owls, a non-native species that is endangering the northern spotted owl, as a wildlife management tool if authorized by the California Department of Fish and Wildlife through a revocable permit.



Add 14 CCR § 486:

(a) Application. A person who is a property owner or tenant may apply to the department for a permit to take barred owls (*Strix varia*) for the purposes of benefiting northern spotted owls or California spotted owls.

(b) Permit Period. Permits shall be valid for a period not to exceed three years.

(c) Required Information and Conditions of Permit.

(1) The department shall collect the following information before issuing a barred owl take permit:

(A) The name, mailing address, and contact information of the property owner, including telephone, facsimile, and email. If the owner is a business entity, contact information for the person acting on behalf of the business.

(B) The name, mailing address, and contact information of the person(s) responsible for removing barred owls.

(2) The department may add terms and conditions to the permit necessary to protect wildlife and ensure public safety. To be valid, the permit shall contain a statement signed by the applicant that he/she has read, understands, and agrees to be bound by all the terms of the permit.

(d) Methods of Take.

(1) The Department shall prescribe the method of taking as part of the permit.

(2) The permittee and/or agent shall ensure that all animals are killed in a humane manner instantly and prevent any injured animal from escaping.

(3) The Department shall ensure that the applicant or their agent will follow all best available management practices for locating and removing barred owls.

(e) Utilization of Carcass. Barred owls taken pursuant to this permit must be disposed of as required in the permit.

(f) Suspension and Revocation of Permits. The Department may suspend or revoke a barred owl take permit at any time.

(g) It is unlawful for a permittee or agent to violate any of the terms or conditions of a permit issued pursuant to this section.

(h) The permit does not invalidate any city, county, or state firearm regulation.

Amend 14 CCR § 475.

Methods of Take for Nongame Birds and Nongame Mammals.

Nongame birds and nongame mammals may be taken in any manner except as follows:

(a) Poison may not be used.

(b) Recorded or electrically amplified bird or mammal calls or sounds or recorded or electrically amplified imitations of bird or mammal calls or sounds may not be used to take any nongame bird or nongame mammal except coyotes, bobcats, barred owls American crows and starlings.

(c) Fallow deer, sambar deer, axis deer, sika deer, aoudad, mouflon, tahr and feral goats may be taken only with the equipment and ammunition specified in Section 353 of these regulations.

(d) Traps may be used to take nongame birds and nongame mammal only in accordance with the provisions of Section 465.5 of these regulations and sections 3003.1 and 4004 of the Fish and Game Code.



(e) No feed, bait or other material capable of attracting a nongame mammal may be placed or used in conjunction with dogs for the purpose of taking any nongame mammals. Nothing in this section shall prohibit an individual operating in accordance with the provisions of Section 465.5 from using a dog to follow a trap drag and taking the nongame mammal caught in that trap.

(f) The take or attempted take of any nongame bird or nongame mammal with a firearm shall be in accordance with the use of nonlead projectiles and ammunition pursuant to Section 250.1 of these regulations.

5. Rationale (Required) –

Barred owls are not native to the Western United States and are a threat to our native northern spotted owl and likely a threat to California spotted owls. The science is clear: Barred owl removal is necessary to prevent the extinction of the northern spotted owl. Current state law broadly prohibits the taking “any nongame bird” (FGC § 38000) and “any birds in the orders Falconiformes or Strigiformes” (FGC § 3503.5). Both prohibitions limit the ability of wildlife managers to take invasive barred owls to benefit native species, like the northern spotted owl and California spotted owl. The proposed regulation would allow for the California Department of Fish and Wildlife to permit the taking of non-native barred owls for the benefit of northern spotted owls or California spotted owls.

SECTION II: Optional Information

6. Date of Petition: September 24, 2021

7. Category of Proposed Change

Sport Fishing

Commercial Fishing

Hunting

Other, please specify: Take prohibitions for non-game species

8. The proposal is to: *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*

Amend Title 14 Section(s): 475

Add New Title 14 Section(s): 486

Repeal Title 14 Section(s):

9. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition

Or Not applicable.

10. Effective date: If applicable, identify the desired effective date of the regulation.

If the proposed change requires immediate implementation, explain the nature of the emergency:

11. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents:

Attached to this petition, please find:



Peery, Zach; Wiens, David; Bown, Robin; Carlson, Peter C.; Dugger, Katie; Dumbacher, Jack; Franklin, Alan B.; Hamm, Keith A.; Higley, Mark; Keane, John J. 2018. Barred owl research needs and prioritization in California. Sacramento, CA: California Department of Fish and Wildlife.

Wiens, J. David, Katie M. Dugger, J. Mark Higley, Damon B. Lesmeister, Alan B. Franklin, Keith A. Hamm, Gary C. White et al. "Invader removal triggers competitive release in a threatened avian predator." Proceedings of the National Academy of Sciences 118, no. 31 (2021).

12. Economic or Fiscal Impacts: Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: [Click here to enter text.](#)

13. Forms: If applicable, list any forms to be created, amended or repealed:
Permit application for barred owl removal permit.

SECTION 3: FGC Staff Only

Date received: Oct 14, 2021 |

FGC staff action:

- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: _____ |

Meeting date for FGC consideration: Dec 15-16, 2021 _____ |

FGC action:

- Denied by FGC
- Denied - same as petition _____ |
- Granted for consideration of regulation change

Tracking Number