

COMMITTEE STAFF SUMMARY FOR SEPTEMBER 15, 2022 WRC

7. PREFERENCE POINTS AND REFUNDS FOR HUNTING TAGS**Today's Item****Information** ☐**Action** ☒

Discuss and potentially make recommendations on regulatory options for big game preference points and refunds.

Summary of Previous/Future Actions

- | | |
|--|---|
| • Preference point regulation adopted | Feb 16-17, 2022; Webinar/Teleconference |
| • Vetting of ideas for preference points and hunting tag refunds | Jan 13, 2022; Webinar/Teleconference |
| • Today's potential recommendation | Sep 15, 2022; WRC, Arcadia |

Background

Because demand for certain hunting tags exceeds available opportunities, FGC authorizes a modified preference point drawing system for issuing hunting tags for bighorn sheep, pronghorn antelope, elk, and certain deer hunts in California. To address excess demand, the drawing system gives points to hunters who have applied for, but not obtained, tags in past drawings; the points increase and accumulate incrementally in subsequent years until the hunter is successful in obtaining tags.

In the summer of 2021, large, early-season wildfires caused the closure of many public lands normally accessible for hunting. While wildfire has often impacted hunting opportunities, in recent years the scale and magnitude have increased dramatically. Many hunters who have accumulated points for years and were finally drawn, stand to lose these "once in a lifetime" opportunities.

At its Feb 2022 meeting, FGC approved a regulation change that would allow preference points to be reinstated and tag fees to be refunded for particular bighorn sheep, pronghorn antelope, and elk hunts, and add preference point reinstatement for the closure of high-demand deer areas. Originally, the rulemaking was announced as having a sunset date, to facilitate another rulemaking that would consider various other options that had been suggested prior to the official rulemaking. Although FGC ultimately adopted a rule without a sunset date, it directed staff to work with DFW to consider all the suggestions and comments received to date under the auspices of WRC. FGC further directed staff to bring recommendations to WRC by the end of 2022 on whether to implement any of the suggestions (or explain why they should not be implemented), to inform recommendations from WRC to FGC. Additional detail is provided in the staff summary from FGC's Feb 2022 adoption hearing (Exhibit 1).

DFW's recommendations for several options that were discussed by WRC in Jan 2022 are detailed in Exhibit 2. DFW has also provided a table of deer preference point reinstatements by year and hunt to provide context to those recommendations concerning deer preference points and refunds (Exhibit 3). FGC staff concurs with DFW's recommendations.

Today, WRC will discuss the options and potentially make recommendations to FGC on any requisite changes to the hunting tag preference point and refund regulations.

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

FGC Staff: Based on DFW's recommendations, recommend a future rulemaking to address tag returns and preference point reinstatements, including return dates for postseason tag returns, party tags, a junior second tag rule, and the preference point reinstatement value, with any modifications discussed today.

DFW: See Exhibit 2 for DFW's recommendations.

Exhibits

1. [Staff summary from Feb 16-17, 2022 FGC meeting](#)
2. [DFW recommendations, received Sep 8, 2022](#)
3. [Deer Preference Point Reinstatements by Year and Hunt, DFW, received Aug 29, 2022](#)

Committee Direction/Recommendation

The Wildlife Resources Committee supports a future rulemaking to address tag returns and preference point reinstatements, including return dates for postseason tag returns, party tags, a junior second tag, and preference point reinstatement value, as recommended by DFW and discussed today.

For background purposes only

STAFF SUMMARY FOR FEBRUARY 16-17, 2022

29. BIG GAME PREFERENCE POINTS REINSTATEMENT AND TAG REFUNDS**Today's Item**Information ☐Action ☒

Consider adopting proposed changes to big game regulations for the reinstatement of preference points and tag refunds due to public land closures.

Summary of Previous/Future Actions

- | | |
|-----------------------------------|--|
| • WRC vetting | Sep 16, 2021; WRC, Webinar/Teleconference |
| • Notice hearing | Oct 14, 2021; Webinar/Teleconference |
| • Discussion hearing | Dec 15-16, 2021; Webinar/Teleconference |
| • Today's adoption hearing | Feb 16-17, 2022; Webinar/Teleconference |

Background

Because demand for certain hunting tags exceeds available opportunities, FGC authorizes a modified preference point drawing system for issuing hunting tags for bighorn sheep, pronghorn antelope, elk, and certain deer hunts in California. To address excess demand, the drawing system gives points to hunters who have applied for, but not obtained, tags in past drawings; the points increase and accumulate incrementally in subsequent years until the hunter is successful in obtaining tags.

In the summer of 2021, large, early-season wildfires caused the closure of many public lands normally accessible for hunting. While wildfire has often impacted hunting opportunities, in recent years the scale and magnitude have increased dramatically. Many hunters who have accumulated points for years and were finally drawn stand to lose these "once in a lifetime" opportunities.

At its Oct 2021 meeting, FGC approved a notice of proposed regulation change that would allow preference points to be reinstated and tag fees to be refunded for particular bighorn sheep, pronghorn antelope, and elk hunts, and add preference point reinstatement for the closure of high-demand deer areas. Additional detail is provided in the staff summary from the Oct 14, 2021 notice hearing (Exhibit 1).

The proposed changes were published in the California Notice Registry on Nov 12, 2021. Since that time, only one change to the proposed regulatory text has been made; the term 'deer' was deleted in subsection 708.14 (k)(2)(A), because that section does not pertain to deer and the term was inadvertently included. Further explanation is available in the pre-adoption statement of reasons (PSOR; Exhibit 5). DFW reports that no additional land closures went into effect following the publication of the initial statement of reasons (ISOR; Exhibit 3), therefore, the figures listed in the ISOR represent the final number of tags and points eligible for reinstatement and/or refunds for the 2021 license year.

Proposed Amendments

Although previous descriptions of this proposed regulation change have characterized it as effective for two years while a longer-term solution was developed, the currently proposed

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regulatory text is written such that the regulation has no expiration date or specified seasons. Staff proposes two options for resolution:

- *Option 1:* Adopt the currently proposed regulatory text and authorize a 15-day notice to clarify that the regulation does not sunset. Direct FGC staff to work with DFW to consider all the suggestions and comments received to date for a long-term solution. By the end of 2022, bring recommendations to WRC on whether to implement any of those suggestions (or explain why they should not be implemented), to inform recommendations from WRC.
- *Option 2:* Approve a two-season regulation as originally described (or some other limited time frame) and authorize a 15-day notice to add a sunset provision to the regulation. Direct FGC staff to work with DFW to consider all the suggestions and comments received to date for a long-term solution. Before the end of the designated time period, initiate a new rulemaking to permanently implement the desired system.

If adopted by FGC, staff will request that the regulation changes be made effective no later than Apr 22, 2022.

Significant Public Comments

1. A commenter states that unused hunting tags should not be refunded but rather used to further the conservation and maintenance of public lands. In addition, land policies specific to fire hazards should be limited to areas near active fires. (Exhibit 8)
2. A non-governmental organization suggests that purchasing hunting tags comes with no guarantees, opportunities may be lost for a variety of reasons, FGC and DFW have no control over public land closures, and DFW should focus on its responsibility to sell only the correct number of tags (Exhibit 9).

Recommendation

FGC staff: Select option 1 to adopt the regulatory text as proposed in the ISOR (with deletion of the word 'deer') and authorize a 15-day notice to clarify that the regulation does not sunset. Direct staff to work with DFW to consider all the suggestions and comments received to date and bring recommendations for the various suggestions to WRC prior to the Jan 2023 WRC meeting.

DFW: Adopt the regulation as proposed in the ISOR with the deletion of the word 'deer.'

Exhibits

1. Staff summary from Oct 14, 2021, FGC meeting (for background purposes only)
2. DFW memo, received, Oct 4, 2021
3. ISOR
4. DFW memo, received Feb 3, 2022
5. PSOR
6. Revised proposed regulatory text
7. Economic and fiscal impact statement (Std 399) and addendum
8. Email from Colin Gallagher, received Jan 21, 2022

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9. Letter from Marilyn Jasper, Chair, Public Interest Coalition, received Feb 3, 2022

Motion

Moved by _____ seconded by _____ that the Commission adopts the proposed changes to Section 708.14 related to big game preference points and tag refunds. The Commission authorizes publication of a 15-day notice as needed.

OR

Moved by _____ seconded by _____ that the Commission adopts changes to Section 708.14 related to big game preference points and tag refunds with the addition of language to sunset these provisions on _____. The Commission authorizes publication of a 15-day notice as needed.

Big Game Tag Refunds and Preference Points Reinstatement: Background

Big Game Tag Applications

Big game tags are assigned through an annual drawing. Hunters submit draw applications for deer, elk, pronghorn and bighorn sheep.

Deer

For deer, hunters may select up to three sequentially ranked hunts. Hunters may apply in parties of up to six. Applicants pay the entire tag fee with the application. Deer tags are non-refundable with the exception of a partial refund for non-resident hunters. Deer tag winners are automatically mailed tags.

Elk, Pronghorn and Bighorn Sheep

For elk, pronghorn and bighorn sheep, hunters select a single first-choice hunt. Hunters may apply in parties of up to two for elk and/or pronghorn. Applicants pay only the application fee with the application. Tag winners may purchase a tag after the draw and an alternate list is maintained to award tags to the next in line as relevant. Tag winners do not lose preference points unless they purchase a tag.

Preference Points

Customers gain a preference point each year they are unsuccessful in getting their first-choice hunt in the draw, or, if they choose not to apply for a hunt, may purchase a preference point. A portion of the tags are awarded to customers with the most preference points and all preference points are lost when a customer is issued a tag for their first-choice hunt. High demand hunts require many preference points to guarantee success in the draw; some low demand hunts do not require any points.

Tag Returns

Pre-Season Tag Returns

Tags can currently be returned before the season starts and are then automatically eligible for point reinstatement under current regulations. Deer tag fees are non-refundable and tags are not reissued. Preference points may be reinstated for premium deer upon tag return. Elk, pronghorn and bighorn sheep tags are refundable less a processing fee. Tags are offered to the first alternate, and so on.

Post-Season Tag Returns

If a hunt area is inaccessible for sixty-six percent (66%) or more of a hunt season due to a public land closure caused by wildfire, customers may return their tags for preference points reinstatement and, if applicable, tag refund.

Big Game Tag Refunds and Preference Points Reinstatement: Proposals and Recommendations

Post-Season Tag Refunds and Preference Points Reinstatement

Issue Credits in Lieu of Refunds

Tag refunds are issued for applicable species. Credits are not currently issued. Proposal to issue credits in lieu of refunds.

Recommendation: Reject Proposal

Do not issue credits. There is no authority to issue credits in Fish and Game Code.

Issue Point Reinstatements but No Refunds

Tag refunds are currently issued with points reinstatement for elk, pronghorn and bighorn sheep. Points reinstatement, but no refunds, are issued for premium deer. Proposal to issue points reinstatement but no refunds. Hunters and non-hunters expressed sentiment that refunds are not necessary; if you take a risk, you might not get your money back.

Recommendation: Reject Proposal

Continue to issue refunds and points reinstatement for elk, pronghorn and bighorn sheep, unless Department data indicates the fiscal loss from refunds is significant and warrants a policy reversal. Continue to issue points reinstatements, but no refunds, for premium deer.

Issue Point Reinstatements and Tag Refunds

Tag refunds are currently issued with points reinstatement for elk, pronghorn and bighorn sheep. Points reinstatement, but no refunds, are issued for premium deer. This is the "no change" alternative.

Recommendation: Reject Proposal

Continue to issue refunds and points reinstatement. Consider changes to the tag return deadline and calculation of point reinstatement. Continue to issue points reinstatements, but no refunds, for premium deer.

Rollover Tags to the Following Year

Tags do not rollover to the following year. Preference points are reinstated and tags are refunded. Proposal to rollover tags to the following year in lieu of point reinstatement and/or tag refunds.

Recommendation: Reject Proposal

Do not rollover tags to the following year. There are many logistical issues with tag rollover including, but not limited to: potential quota conflicts, management of tag reissue and the need for extensive modifications to the existing ALDS system. Additionally, there is potential that some customers will not want the tag

to rollover. Not allowing tag rollover is consistent with other states' policies, according to a Department query of R3 managers.

Remove Premium Deer Point Reinstatements

Premium deer are included the current points reinstatement option. Proposal to remove premium deer from the current points reinstatement option.

Recommendation: Reject Proposal

Do not remove premium deer from current points reinstatement. Continue to offer points reinstatement for premium deer, as all premium deer require use of preference points.

Issue Tag Refunds for All Deer Tags

Deer tags are currently partially refunded for non-residents and are not refunded for residents. Proposal to offer refunds for all deer tags.

Recommendation: Reject Proposal

Do not refund all deer tags. Continue to offer partial refunds for non-residents. Refunding all deer tags would require extensive modifications to the existing ALDS system and would negatively impact the fiscal health of the Department.

Set Stricter Return Dates for Postseason Tag Return

Customers must currently return tags for points reinstatement and/or tag refunds by February 28 (postmarked). Proposal to (1) set an earlier static date for returns, (2) use season end date for returns (3) use date calculated at two-thirds of the season. Specifically, for proposal (1): set a static date of December 31, as no deer seasons extend beyond December 31 and later seasons are generally not affected by fires. For proposal (2): customers are aware of the season end date and can return tags by the end date. For proposal (3): customers have no need to retain a tag if fires have prevented them from hunting for two-thirds of the season.

Recommendation: Accept proposal

Use season end date as postmark deadline for tag returns (2). The season end date is both effective and memorable. Staggered tag returns may have a positive impact on ALDS workload.

Harvest Report

Customers are not currently required to submit a harvest report with a post-season tag return. Proposal to require submission of a harvest report with a tag return.

Recommendation: Reject proposal

To be eligible for post-season point reinstatement, customer must have previously submitted a completed harvest report or include a completed harvest report with their submission.

Pre- and Post-Season Tag Returns and Preference Points Reinstatement Proposals

Party Tags

All party members may return tags, potentially invoking the “Grandma loophole.” Although there are no patterns of major abuse of the loophole, it should be closed, as more hunters have become aware of the loophole. Tag returns have increased significantly due to recent environmental conditions.

Recommendation: New proposal

Individual party members may return tags only if their points are less than or equal to the party points average. All party members must return their tags for all points reinstatement.

Junior Second Tag Rule

If a junior hunter is awarded two first choice tags, they may return one for preference points reinstatement. Proposal to require return of both tags for preference points reinstatement.

Recommendation: New proposal

To be eligible for preference points reinstatement, junior hunters must return all first choice tags.

Preference Point Reinstatement Value

Preference points reinstatement value is currently the point value in the draw, plus an additional point for participation in the draw. Proposal to reinstate only the point value in the draw, with no additional point for participation.

Recommendation: New proposal

Continue to offer reinstatement of the point value, plus an additional point for participation in the draw, unless the “Grandma loophole” in party tags is not addressed.

California Department of Fish and Wildlife
Deer Preference Point Reinstatements by Year and Hunt

This data represents the preseason tag returns for deer and excludes the 2021 returns that were accepted as part of the emergency regulation implemented last year.

Sum of PointReturns	Column Labels												
Hunt Code	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Grand Total
A1		1	1			1	4	1			13		21
A11								2		1	34		37
A12				1			1	1	3		56	8	70
A13								2	1		6		9
A14									1		4	3	8
A15											3	2	5
A16									1		1	1	3
A17							1				1	1	3
A19											1		1
A20				1				1	2			1	5
A21							1			1	3		5
A22											1		1
A24							1			13	2		16
A25									1	2	4	1	8
A26								2		2	3		7
A27							3	1	1	1	2		8
A3										1	29	8	38
A30							1	1	1	22	7		32
A31				1						1			2
A33								1	1	4	1		7
A4									1	1	3		5
A5											7	1	8
A6							2	4			4		10
A7								3	1		47	4	55
A8								1			1		2
A9									2			2	4

C	4	3	3	1		1	2	3	3	75	74	5	174
D12							1	2	2	1	3		9
D14										1			1
D16				2									2
D17		1								1	2		4
D6					1		2		2		6		11
D9					1								1
G1		1					2		4	38	44	2	91
G12										1	4		5
G13										2			2
G19							1			1	1		3
G21							2	1		12			15
G3									1	1	1		3
G37								1	2	5	3		11
G38					1		5	5	6	25	14	2	58
G6							1		1	15	10		27
G8								1			1	1	3
G9	12												12
J1								1	3	1	1		6
J10					1		7	1		1			10
J11								2					2
J17								1					1
J18											2	2	4
J19										2	1		3
J20											2		2
J21									1				1
J4											1		1
J8								1	1				2
J9							1						1
M11						1		1		3	1		6
M3								1		1	7		9
M4										2	2		4
M5									1		1		2
M6										2	1		3

M7							1	1				1	3
M8									1	3	3	1	8
M9											2		2
MA1										1	3		4
MA3							1						1
X1							6	4	7	58	120	2	197
X10							1	2	1	44	12	1	61
X12							3	4	3	104	29	2	145
X2							2	4	3	37	44	4	94
X3A	1						7	6	4	46	31		95
X3B							15	12	16	101	63	8	215
X4						1		3	4	51	122	4	185
X5A							1		1	16	19	4	41
X5B		1						4	1	6	4		16
X6A							3	6	23	77	171	1	281
X6B							3	4	10	61	187	5	270
X7A							3	2	2	50	40	1	98
X7B							1	4	4	34	20	1	64
X8								4		36	42	2	84
X9A							1	2	7	182	47		239
X9B								6	1	100	35	2	144
X9C								1	1	14	6	4	26
Grand Total	17	7	4	6	4	4	86	110	132	1260	1415	87	3132