

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

Amend Sections 362
Title 14, California Code of Regulations
Re: Nelson Bighorn Sheep Hunting

I. Date of Initial Statement of Reasons: January 17, 2023

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 15, 2022

Location: San Diego

(b) Discussion Hearing

Date: February 8, 2023

Location: Sacramento

(c) Adoption Hearing

Date: April 19, 2023

Location: Fresno/Bakersfield

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.

Background

The California Department of Fish and Wildlife (Department) manages bighorn sheep hunting to provide sustainable public recreation opportunities. The Fish and Game Commission (Commission) periodically considers the recommendations of the Department in establishing bighorn sheep hunting regulations. Considerations include recommendations for adjusting tag quotas, setting hunt periods, modifying zone boundaries, and authorizing methods of take, among others, to help achieve management recommendations.

Periodic adjustments of Nelson bighorn sheep hunting regulations, such as tag quotas, in response to dynamic environmental, and biological conditions are necessary to maintain consistency with management recommendations and Fish and Game Code. Fish and Game Code subdivision 4902(b)(2) states the Commission may not adopt regulations authorizing the sport hunting in a single year of more than 15 percent of the mature Nelson bighorn rams in a single management unit.

Current Regulations

Section 362 provides definitions, hunting zone descriptions, season opening and closing dates, tag quotas (total number of hunting tags to be made available), and bag and possession limits for bighorn sheep hunting. Individuals are awarded a bighorn sheep hunting tag through the Department's Big Game Drawing. A limited number of fundraising tags are also available for

purchase, usually by auction, via non-governmental organizations that assist the Department with fundraising.

Harvest of a bighorn sheep is authorized for an individual with a tag for a respective hunt zone and season. Tag quotas are established based on a variety of factors, including population density and abundance, age and sex composition, and distribution.

Proposed Regulations

The proposed changes to Section 362 includes amending subsection 362(d) to modify the hunt tag quota for the general lottery in the Marble and Clipper Mountains Hunt Zone 1 (San Bernardino County) and a pertinent fundraising tag. Currently, the Marble and Clipper Mountains public tag quota is 5 tags, and 1 for the Marble, Clipper, and South Bristol Mountains Fundraising tag. For 2023, the proposed tag allocation for the Marble and Clipper Mountains is [0-5] tags for the public tag quota, and [0-1] rams for the Marble, Clipper, and South Bristol Mountains Fundraising Tag (Table 1). The tag quotas are provided as ranges to allow the Commission flexibility in determining final regulations.

Table 1. Proposed Bighorn Sheep Tag Changes

Hunt Zone or Tag Type	2021/22 Tag Quota	Proposed Tags for 2023/24 Hunt Year
Zone 1 – Marble and Clipper Mountains	5	[0-5]
Marble/Clipper/South Bristol Mountains Fundraising Tag	1	[0-1]
Total Tag Quota All Hunt Zones	30	[24-29*]

**The recommendation is to reduce the tag numbers by at least one. If the Commission chooses not to decrease the number of tags, the rulemaking will be withdrawn.*

The Marble and Clipper Mountains populations have been subject to extreme drought, low recruitment, and respiratory disease in recent years. Recent population estimates and minimum counts in the Marble and Clipper Mountains suggest population declines. Specifically, the Department’s 2022 population estimate from the summer of 2022 was only 25 to 83 adult male sheep such that the mature (2-yrs+) population available for hunting could be less than 25 rams. Therefore, the current tag quota of 5 tags may exceed the 15% threshold allowable pursuant to Fish and Game Code subdivision 4902(d). Furthermore, annual surveys during 2015–2022 indicated between 0 and 0.18 lambs per ewe survived from the previous year to be counted as yearlings (i.e., recruitment). The minimum recruitment rate for a sustainable population is on the order of 0.20. Low recruitment rates are attributed to impacts from severe drought, and to impacts of a respiratory disease-causing pathogen (*Mycoplasma ovipneumoniae*) first detected in the Marble Mountains population in 2013. A tag quota range is proposed that will allow consistency with management unit plan recommendations and prevent a possible violation of Fish and Game Code.

(b) Goals and Benefits of the Regulation

The goals and benefits of the regulations are to help achieve management recommendations in existing unit plans, and so as not to exceed the 15 percent threshold identified in Fish and Game Code subdivision 4902(b)(2).

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority: Section(s) 200, 203, 203.1, 265, 1050, and 4902 Fish and Game Code

Reference: Section(s) 1050, 3950, and 4902 Fish and Game Code

(d) Specific Technology or Equipment Required by Regulatory Change

None

(e) Identification of Reports or Documents Supporting Regulation Change

- Bleich, Vernon C., Vernoy, Robert L., Weaver, Richard A. (1987). Mountain Sheep Management Plan: Marble Mountains Management Unit, California Department of Fish and Wildlife.
- Pauli, Andrew M. and Bleich, Vernon C. (1992). Mountain Sheep Management Plan: Clipper Mountains Management Unit, California Department of Fish and Wildlife.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative

The no change alternative was considered and rejected because it would not be consistent with maintaining bighorn sheep populations within desired population objectives. Fish and Game Code subdivision 4902(b) and management unit plans specify desired harvest levels. Retaining the current tag quota for each zone may not be responsive to environmental and biological changes in the status of various herds. The no-change alternative would not allow for adjustment of tag quotas in response to changing environmental and biological conditions.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no significant adverse effect on the environment, and therefore, no mitigation measures are required.

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 Commission estimates that five hunting guides that contract with bighorn sheep tag holders to provide guide services will lose the opportunity to compete for contracts for trips with five hunters with drawn tags and one hunter with a fundraising tag due to the proposed reduction in tags. However, in sum, the proposed regulation is not anticipated to have a

significant statewide adverse economic impact directly affecting business broadly, including the ability of California businesses to compete with businesses in other states. This regulatory action will not impose cost impacts that a representative individual hunter would necessarily incur in reasonable compliance with the proposed regulation.

(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 does not anticipate the creation of jobs and anticipates the elimination of up to 1 full-time-equivalent (FTE) job comprised of 15 temporary (3.5 week) jobs for hunting guide aids (sub-guides) within the state. No significant impacts to the creation of new business, the elimination of existing businesses, or the expansion of businesses in California are anticipated. The Commission does not anticipate direct benefits to the general health and welfare of California residents or to worker safety, but anticipates benefits to the environment.

(c) Cost Impacts on a Representative Private Person or Business

The Commission estimates that five bighorn sheep guides will lose the opportunity to compete for contracts for hunting trips with four public tag hunters and one fundraising tag hunter due to the proposed reduction in tags for the affected hunt zone. The hunt guides receive an estimated average of \$9,000 per public drawn hunt and an average of \$14,500 for a fundraising tag hunt and with the loss of six hunts the combined loss to all bighorn sheep guides is estimated to be approximately \$59,500 over the hunting season ($\$9,000 \times 5$) public tags + ($\$14,500 \times 1$) fundraising tag = \$59,500 or approximately \$11,900 per guide in income opportunity losses.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The Department anticipates an estimated decline of \$73,534 in tag sales revenue with the implementation of the proposed regulation.

(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

(i) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission estimates that that reduction in bighorn sheep tags could result in about one FTE job comprised of 15 fewer subcontracted hunting guide temporary job opportunities within the state. No creation of jobs is anticipated.

(j) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission estimates that five hunting guides that contract with bighorn sheep tag holders to provide hunting guide services will lose the opportunity to compete for contracts for trips with five hunters with drawn tags and one hunter with a fundraising tag due to the proposed reduction in tags. Bighorn sheep hunt guides typically hire about three additional subcontracted guides to assist with packing, scouting, cooking, and other support for the duration of the scouting and hunting season that may span several months. The loss of income opportunities from guiding bighorn sheep hunts is not anticipated to induce the elimination of existing businesses and no creation of new businesses is anticipated.

(k) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate impacts on the expansion of businesses currently doing business within the state because the expected economic impacts of the proposed regulations are unlikely to be substantial enough to increase the demand for goods or services related to bighorn sheep hunting.

(l) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission does not anticipate impacts on the health and welfare of California residents.

(m) Benefits of the Regulation to Worker Safety

The Commission does not anticipate impacts on worker safety.

(n) Benefits of the Regulation to the State's Environment

The Commission anticipates incremental positive impacts to the state's environment.

Informative Digest/Policy Statement Overview

Current regulations in Section 362 provide definitions, hunting zone descriptions, season opening and closing dates, tag quotas (total number of hunting tags to be made available), and bag and possession limits for bighorn sheep hunting. Individuals are awarded a bighorn sheep hunting tag through the Department's Big Game Drawing. A limited number of fundraising tags are also available for purchase, usually by auction, via non-governmental organizations that assist the Department with fundraising.

Harvest of a bighorn sheep is authorized for an individual with a tag for a respective hunt zone and season. Tag quotas are established based on a variety of factors including population density and abundance, age and sex composition, and distribution. The Department has identified the following areas in which bighorn sheep hunting opportunities need to be reduced.

The proposed changes to Section 362 includes amending subsection 362(d) to modify the hunt tag quota for the general lottery in the Marble and Clipper Mountains Hunt Zone 1 and a pertinent fundraising tag. Currently, the Marble and Clipper Mountains public tag quota is 5 tags, and 1 for the Marble, Clipper, and South Bristol Mountains Fundraising tag. For 2023, the proposed tag allocation for the Marble and Clipper Mountains is [0-5] tags for the public tag quota, and [0-1] rams for the Marble, Clipper, and South Bristol Mountains Fundraising Tag.

The Marble and Clipper Mountains populations have been subject to extreme drought, low recruitment, and respiratory disease in recent years, and the most recent population estimates suggest a decline. Specifically, the Department's 2022 population estimate from the summer of 2022 was only 25 to 83 adult male sheep such that the mature (2-yrs+) population available for hunting could be less than 25 rams. Therefore, the current tag quota of 5 tags may exceed the 15% threshold. Furthermore, annual surveys during 2015–2022 indicated between 0 and 0.18 lambs per ewe survived from the previous year to be counted as yearlings (i.e., recruitment). The minimum recruitment rate for a sustainable population is on the order of 0.20. Low recruitment rates are attributed to impacts from severe drought, and to impacts of a respiratory disease-causing pathogen (*Mycoplasma ovipneumoniae*) first detected in the Marble Mountains population in 2013. For these reasons, a tag quota range is proposed that will allow consistency with management unit plan recommendations and prevent a possible violation of Fish and Game Code. Due to concerns regarding the low population and reproduction estimates, the Department is taking a precautionary approach by proposing the option of reducing the total tag quota by up to six tags for next year's season. The Department will consider minimum population viability recommendations in unit planning documents for the Marble and Clipper Mountains units, and the desert bighorn sheep population statewide when recommending harvest tag quotas.

Benefit of the Regulations:

The proposed regulatory action is designed to help achieve management objectives related to current environmental, biological, and social conditions, as outlined in the Marble and Clipper Mountains Management Plans, and to comply with the 15 percent threshold identified in Fish and Game Code 4902(b)(2).

Consistency and Compatibility with Existing Regulations:

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. Commission staff has searched the California Code of Regulations and has found no other state regulations that address the tag quotas (total number of hunting tags to be made available), and bag and possession limits for bighorn sheep hunting. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other big game mammal regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.