

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

Amend Section 230
Title 14, California Code of Regulations
Re: Issuance of Permits for Contests Offering Prizes for the Taking of Game Fish

I. Dates of Statements of Reasons

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|----------------------------------|----------------------|
| (a) Initial Statement of Reasons | Date: March 20, 2022 |
| (b) Final Statement of Reasons | Date: June 21, 2022 |

II. Dates and Locations of Scheduled Hearings

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|------------------------|----------------------|-------------------------------|
| (a) Notice Hearing | | |
| | Date: April 21, 2022 | Location: Monterey/Santa Cruz |
| (b) Discussion Hearing | | |
| | Date: May 19, 2022 | Location: Teleconference |
| (c) Adoption Hearing | | |
| | Date: June 16, 2022 | Location: Los Angeles/Orange |

III. Update

At the Fish and Game Commission’s June 16, 2022 meeting, the Commission approved the Department of Fish and Wildlife’s recommended amendments to section 230 in title 14 of the California Code of Regulations set forth in the attached Approved Regulatory Text. There have been no changes in applicable laws or to the effect of the proposed amendments from the laws and effects described in the Notice of Proposed Action.

Non-substantive Changes

Following adoption by the Commission, the Department made additional non-substantive changes to the regulatory text for clarity and consistency. The changes are as follows:

- In subsection (a)(4), the phrase “pursuant to this section” was added to the end of the sentence because “contest” and “fishing contest” are not defined in the Fish and Game Code or in title 14.
- In subsection (a)(6), the phrase “pursuant to this section” at the end of the sentence was removed because “prize compensation” is defined in the Fish and Game Code, and therefore not “pursuant to” section 230.
- In subsection (d)(5), the second sentence, had read: “Applications for Type B, Type C, and Type D permits may be submitted to any departmental regional office (see addresses of regional offices attached to form DFW 775), unless submittal using ALDS is required.” It now

reads: “Applications for Type B, Type C, and Type D permits may be submitted to any department regional office using the address list attached to form DFW 775, unless submittal using ALDS is required.” The changes make this sentence more readable and changing “departmental regional office” to “department regional office” makes this consistent with the first sentence in subsections (d)(5) and (f)(1)(l) and the last sentence in subsection (j), where “department regional office” is used.

- In subsection (d)(5), second sentence, and subsection (f)(1)(F), first sentence, the word “subdivision” was changed to “subsection” for consistency. Everywhere else in the regulatory text, “subsection” is used.
- In subsection (j), “department” was inserted in the last sentence before “regional office” to make it consistent with subsections (d)(5) and (f)(1)(l) and to make it clear that “regional office” pertains to the regional office of the Department.
- In subsection (o)(5)(A), the comma after “notification” was removed to make the sentence grammatically correct.
- List of authority sections was updated to include section 265.

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

No public comments were received.

V. Location and Index of Rulemaking File

California Fish and Game Commission
715 P Street, 16th Floor
Sacramento, CA 95814

VI. Location of Department Files

Department of Fish and Wildlife
715 P Street, 17th Floor
Sacramento, CA 95814

VII. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Seniority-Based Issuance of Type A Contest Permits

In summary, the proposal states that competition for Type A permits for highly desirable locations and dates has resulted in spurious applications to increase an applicant’s odds of receiving their desired location and date. To counter this, an alternative based on seniority, with minimum qualifications establishing a legal business identity, was proposed. Entities with the most consecutive years of participation would receive priority in selecting locations

and dates, and limits to the number of permits they request would be based on the number they have purchased in the prior three years.

Fish and wildlife are the property of the people (Fish & G. Code, § 1600) and it is the mission of the Department to manage California's fish for the use and enjoyment of the public (Fish & G. Code, § 712.1). It is the policy of the Department to provide for the beneficial use and enjoyment of wildlife by all citizens of the state and to provide for economic contributions to the citizens of the state, through the recognition that wildlife is a renewable resource of the land by which economic return can accrue to the citizens of the state, individually and collectively, through regulated management. (Fish & G. Code, § 1801, subdivision (b).) Such management must be consistent with the maintenance of healthy and thriving wildlife resources and the public ownership status of the wildlife resources. Further, the California Natural Resources Agency and the Department are committed to providing equitable access to all Californians to our public natural resources, which includes access to fishing opportunities. Integrating a seniority-based system based on permitting history and/or requiring a business identity immediately precludes equitable access to individuals and businesses/organizations not already engaged in fishing contests or defined as a legal entity. Further, such regulations would perpetuate inequity into the future as newcomers to fishing contest would always be subordinate to those permittees with greater seniority.

(b) No Change Alternative

Stakeholder feedback has consistently shown that the issuance process laid out in current regulatory text does not work for most stakeholders and is not compatible with most business models. If the proposed amendments are not adopted, fishing contest permittees would likely file a formal request to change section 230. Most permit applicants have expressed the need for changes to this regulation in a survey conducted by the Department in 2020 and at public meetings of permit holders held in 2021.

(c) Consideration of Alternatives

In view of information currently available, no alternative considered would be more effective in carrying out the purpose for which the regulatory action is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 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 regulatory 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 because the game fish contests are specific to water bodies

within the state of California.

- (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 any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The Commission does not anticipate any benefits to the health and welfare of California residents or worker safety.

The new regulations will benefit the environment by expanding the Department’s authority to consider potential impacts to the resources when issuing permits. Existing Section 230 states that the Department shall issue a permit if the fishery or health of individual fish are not impacted. The new regulations allow for a holistic consideration of potential impacts to the environment and other resource users before issuing a permit.

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

Fish and Game Code section 2003 provides that an “application for [a fishing contest permit] shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit.” Last year, the application fee was \$68.50. For 2022, the fee is being adjusted for inflation to \$70.30 in accordance with Fish and Game Code section 713.¹ In addition, the Department confirmed this fee will be sufficient to cover the Department’s costs by completing the analysis shown in Table 1 below consistent with Fish and Game Code section 713(g).²

Table 1. Department Costs to Issue Fishing Contest Permits (Processing of Form DFW 775)

Classification	Task	Hours/Permit	Rate	Total
Region 1	110 contests			
Environmental Scientist, Range C	Review, Communication, Entering	0.30	\$66.32	\$19.90
Office Technician	Receive, scan, process payment	0.30	\$33.72	\$10.12
Region 2	414 contests			
Environmental Scientist, Range C	Communication with applicant	0.30	\$66.32	\$19.90

¹ Fish and Game Code section 713(a) requires the changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce, to be used as the index to determine an annual rate of increase or decrease in the fees for licenses, stamps, permits, tags, or other entitlements issued by the Department.

² Under Fish and Game Code section 713(g), the Department and the Commission, at least every five years, shall analyze all fees for licenses, stamps, permits, tags, and other entitlements issued by it to ensure the appropriate fee amount is charged.

Classification	Task	Hours/ Permit	Rate	Total
Office Technician	Receiving/processing application	0.20	\$33.72	\$6.74
Environmental Scientist, Range C	Reviewing application	0.25	\$66.32	\$16.58
Environmental Scientist, Range C	Approving application	0.20	\$66.32	\$13.26
Environmental Scientist, Range C	Entering application	0.20	\$66.32	\$13.26
Environmental Scientist, Range C	Issuing/regional communication	0.20	\$66.32	\$13.26
Scientific Aide	issuing/regional comm.	0.10	\$17.14	\$1.71
Region 3	338 contests			
Staff Services Analyst	Communication with applicant	0.20	\$46.75	\$9.35
Office Technician	Receiving/processing application	0.10	\$33.72	\$3.37
Staff Services Analyst	Entering application	0.10	\$46.75	\$4.68
Staff Services Analyst	Reviewing application	0.20	\$46.75	\$9.35
Environmental Program Manager	Approving application	0.20	\$117.71	\$23.54
Staff Services Analyst	Issuing/regional communication	0.20	\$46.75	\$9.35
Region 4	410 contests			
Environmental Scientist, Range C	Communication with applicant	0.15	\$66.32	\$9.95
Office Technician	Receiving/processing application	0.20	\$33.72	\$6.74
Office Technician	Entering application	0.10	\$33.72	\$3.37
Environmental Scientist, Range C	Reviewing application	0.20	\$66.32	\$13.26
Environmental Program Manager	Approving application	0.10	\$117.71	\$11.77
Office Technician	Issuing permit	0.20	\$33.72	\$6.74
Region 5	277 contests			
Environmental Scientist, Range C	Communication with applicant	0.20	\$66.32	\$13.26
Office Technician	Receiving/processing application	0.10	\$33.72	\$3.37
Environmental Scientist, Range C	Reviewing and approving application	0.20	\$66.32	\$13.26

Classification	Task	Hours/ Permit	Rate	Total
Environmental Scientist, Range C	Entering application	0.10	\$66.32	\$6.63
Office Technician	Receiving/processing application	0.20	\$33.72	\$6.74
Region 6	174 contests			
Environmental Scientist, Range C	Communication with applicant	0.20	\$66.32	\$13.26
Environmental Scientist, Range C	Reviewing application	0.20	\$66.32	\$13.26
Environmental Scientist, Range C	Entering application	0.20	\$66.32	\$13.26
Environmental Scientist, Range C	Issuing/regional communication	0.30	\$66.32	\$19.90
Office Technician	Receiving/processing application	0.30	\$33.72	\$10.12
	All Regions Subtotal			\$339.30
	Overhead		24.32%	\$82.52
	Total for 6 permits			\$421.82
	Per Permit Average Cost			\$70.30

Notes: CalHR California State Civil Service Pay Scales by Classification. Rate is the median hourly salary including benefits (staff benefit rates for non-peace officer = 52.734%). Overhead for non-federal projects (24.32%) is applied to program subtotal costs.

In addition, the contest observer fee is proposed to increase from \$100 to \$275. Although a contest observer is rarely required, this adjustment is necessary to allow the Department to more fully recover staff salary and benefit costs when an observer is required. To minimize the fee increase, travel time and vehicle expenses have not been included. Thus, the amount charged for a Department contest observer will allow for only the partial recovery of necessary expenses incurred by the Department.

Table 2. Department Game Fish Contest Observer Cost (Fee Per Day)

Classification	Task	Hours	Rate	Total
Environmental Scientist, Range C	Travel to & from Region HQ to tournament weigh-in location*	---	\$66.32	\$0.00
Environmental Scientist, Range C	Observe fishing contest weigh-in	2.5	\$66.32	\$165.80
Environmental Scientist, Range C	Complete a report detailing observations/recommendations	0.83	\$66.32	\$55.27
	Vehicle mileage*	---	\$0.55/mile	\$0.00
	Program Subtotal			\$221.07
	Overhead	---	24.32%	\$53.76
	Program Total			\$274.83

Classification	Task	Hours	Rate	Total
	Rounded up to nearest \$0.25			\$275.00

Notes: CalHR California State Civil Service Pay Scales by Classification. Rate is the median hourly salary including benefits (staff benefit rates for non-peace officer = 52.734%). Overhead for non-federal projects (24.32%) is applied to program subtotal costs.

*Travel time and vehicle mileage are not included in the determination of the Contest Observer fee per day.

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

None. No change in costs or savings to state agencies are expected as a direct result of the proposed amendments to Section 230. However, the Department has estimated that the initial offering process continues to engage staff time throughout the state, and particularly Fisheries Branch staff in the Department’s headquarters. An estimate of the time per entry and total program cost is detailed in Table 2. Currently, there is no fee to submit a form DFW 774 to participate in the initial offering. The following table is to disclose that the Department cost per entry is estimated to be approximately \$230.92. The Department receives an average of 70 forms (DFW 744) per year. The total annual staff time costs (with benefits and overhead) are estimated to be approximately \$16,165 in a typical year.

Table 3. Department Cost Per Form 774 and Total Program Costs

Fisheries Branch Staff	Task	Hours per Form	Expanded Hours	Rate	Total
Senior Environmental Scientist – (Sup)	Program oversight, process bass reporting	0.4	30	\$101.80	\$3,054.00
Environmental Scientist - C	Draw planning	0.5	35	\$66.32	\$2,321.20
Environmental Scientist - C	Conducting draw (online)	0.6	40	\$66.32	\$2,652.80
Environmental Scientist - C	Draw back-end work	0.6	40	\$66.32	\$2,652.80
Environmental Scientist - C	Communication throughout year	0.5	35	\$66.32	\$2,321.20
	HQ Program Subtotal	2.6	180		\$13,002.00
	Overhead			24.32%	\$3,162.09
	Program Total				\$16,164.09
Average of 70 forms/year	Per Participant	\$230.92		70	\$230.92

(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

Unless otherwise specified, all section references in this document are to title 14 of the California Code of Regulations.

Section 2003 of the Fish and Game Code authorizes the California Department of Fish and Wildlife (Department) to issue permits for persons seeking to offer prizes for the taking of game fish, subject to regulations adopted by the Fish and Game Commission (Commission). The regulations are in Section 230. Section 230 establishes the rules by which the Department issues these permits. Consistent with the Department's recommendations, the Commission is proposing to amend Section 230 and to revise one form and adopt three new forms associated with these fishing contests to resolve issues with the current permit issuance requirements and processes which do not meet the needs of today's contest applicants.

The proposed changes to Section 230 include the following:

- Define certain terms used in Section 230.
- Remove the use of "random draw" for Type A permits.
- Establish an "initial offering" process for Type A permits to resolve conflicts for contest dates and waters.
- Revise the requirements for Type A and Type B permits for fishing contests.
- Establish two new contest permit types: Type C and Type D.
- Revise the number of permits for contests issued per water per month.
- Make changes to the application process for contest permits outside the initial offering process.
- Increase the observer fee from \$100 to \$275.
- Specify the permit fee that must accompany form DFW 775.
- Remove the restriction that all contestants must have facilities for keeping bass alive due to the new permit Types C and D.
- Restrict the number of changes to approved permits to three.
- Require permittees to complete and file fishing contest reports electronically.
- Require notice to applicants and permittees before the Department denies or revokes a permit application, a permit change request, or a permit.
- Allow applicants and permittees to request the Department to reconsider any decision to deny or revoke a permit application, a permit change request, or a permit.
- Adopt form DFW 774, the Initial Offering Application for Type A Game Fish Contests, incorporate the form into Section 230 by reference and require applicants this use this form.
- Update existing Form DFW 775, the Application for Permit to Offer Prizes for the Taking of Game Fish.
- Adopt form DFW 776, Fishing Contest Report, to collect fishery and participation data and incorporate the form into Section 230 by reference and require permittees to use this form.
- Adopt form DFW 777, Aquatic Invasive Species Self-Certification for Game Fish Contests, and incorporate the form into Section 230 by reference, and require contestants to use this form.

Benefit of the Regulations

This regulatory action will establish contest conditions that provide for the welfare and conservation of fish populations benefiting the environment, and limiting the impact to other recreational users, while also allowing the offering of prizes for the taking of game fish.

The fishing contest types requested by today's anglers have changed significantly. There has also been increased demand for fishing contest permits, especially for contests targeting black bass. To ensure the welfare of fish populations, the Department limits the number and type of contests that may be held on each water each day. The regulation changes proposed herein will provide for equitable distribution of contest permits as well as ensure for the welfare of fish populations.

Consistency and Compatibility with Existing Regulations

Section 20 of Article IV of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Commission has reviewed its own regulations and finds that the proposed regulatory action neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to the permitting of game fish contests.

Update

At the June 16, 2022 Commission meeting, the Commission adopted the changes as recommended by the Department. 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.

Non-substantive Changes

Following adoption by the Commission, the Department made additional non-substantive changes to the regulatory text for clarity and consistency. The changes are as follows:

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consistent with the first sentence in subsections (d)(5) and (f)(1)(I) and the last sentence in subsection (j), where “department regional office” is used.

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- List of authority sections was updated to include section 265.