



Tracking Number:(2021-007R)

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: Colin Gallagher

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: **Authority cited: Government Code 11340.7(c), Sections 200 and 203 of Fish and Game Code, and in context of the proposal, note in particular Sections 200(a) and 203(d), of Fish and Game Code. (Reference: Sections 2005, 2055, 3004.5, 3004.5(b) (Section 4 of SB 856, for July 1, 2024) amending the Fish and Game Code via SB 856 (2021-2022), 3950, and 3950(a-c) (Section 13 of SB 856, for July 1, 2024) amending the Fish and Game Code via SB 856 (2021-2022), Fish and Game Code.)**

Authority for Commission to enact changes to California Code of Regulations Title 14, Section 353 (for 14 CCR § 353 subsection (c): 14 CA ADC § 353 subsection (c) (Refer also to: 14 CCR § 475)

- 3. Overview (Required)** - Summarize the proposed changes to regulations: I am proposing a **partial reconsideration**, pursuant to California Government Code 11340.7(c), of the Fish and Game Commission's decision to deny my Regulatory Petition (2021-007). The Fish and Game Commission acted to deny my Petition (2021-007). California Government Code 11340.7(c) allows me to, in the words of California Government Code, "request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the

decision involved.” Furthermore, the reconsideration process under California Government Code 11340.7(c) does not preclude later judicial review. Under California Government Code 11350(a), “The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 (...)” In seeking this reconsideration under Government Code 11340.7(c), I hope to remedy the problems inherent to the original decision and the address the issues with the process of decision-making, thus potentially reaching a different and better decision via reconsideration, through a new Commission deliberation. It is also hoped that this process will not be bogged down with years of delay, and will result in a relatively rapid process to decision from this point of request for reconsideration.

4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: The request was first submitted to the Fish and Game Commission (FGC) by Colin Gallagher (petitioner) on May 23, 2017, with engagement to the Wildlife Resources Committee and FGC on the subject annually thereafter. A formal petition was submitted by Colin Gallagher (petitioner) to the FGC on May 10, 2021, with a Request to Correct Authority Cited (and request to waive 10 day response requirement) submitted on May 18, 2021, upon the request of staff who had asked that the petition be submitted with the waiver. After a great deal of delay – five years, 8 months, and almost 19 days later – the result was a denied petition (from the decision of the Fish and Game Commission on February 8, 2023), with no rationale given from staff other than a reference to a December memorandum to a Department of Fish and Wildlife Memorandum from a prior year. In addition, the Petition was not even included on the agenda as issued, but was provided on a revised agenda later issued before the February 8, 2023 meeting. The relevant element of the Petitioner's proposal that he specifically asked that the Commissioners approve (as the preferred alternative) was the following:

"Alternatively, the Commission could make a change that would require .357 caliber minimum for BB devices to hunt wild boar (this would not alter any California lead free regulations) and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds)."

Once submitted, Petitioner was not allowed to change the language of the Petition. During this reconsideration, the Petitioner submits that if the Commission will allow it, the Petition should be changed to state simply the following: “BB devices will be allowed to hunt wild pig as a method of take, effective July 1, 2024.” It is suggested that the Commission also add a caliber minimum as .357 for wild pig, and provide examples of PCP “airguns” (BB devices) in its online literature.

For many months, the Petitioner was clear to the Commission and to all staff concerned that this was in fact the remaining, relevant section that he would prefer be approved. Following the approval of SB 856 (2021-2022), the Petitioner also provided, at staff's request, a presentation (powerpoint and PDF) on the subject of why the Regulatory Petition was needed, and the Petitioner / Petition author clarified to staff that while he was requesting the regulatory petition be approved, he didn't want it to be designed to take effect until July 1, 2024, which would be consistent with SB 856 (2021-2022). All that was asked was a Commission action to support the proposal and ultimately begin the process of hunters using high powered BB devices for take of wild pig – as is already done lawfully in numerous other states. **This is in fact the partial reconsideration requested – the above “preferred alternative,” but taking effect July 1, 2024.**

REQUIRED ELEMENTS UNDER LAW TO INCLUDE IN THIS RECONSIDERATION REQUEST:



Per Government Code 11340.6 (as required in 11340.7(c) for reconsideration):

(a) The substance or nature of the regulation, amendment, or repeal requested.

The substance or nature of the regulation is having to do with a new proposed method of take for wild pig which, if approved, would allow for specific types of BB devices, based on their designation in caliber, to be allowed to hunt wild pig, beginning on July 1, 2024, consistent with both Fish and Game Code as it will be amended by SB 856 (2021-2022) and consistent with an action of the FGC to approve the proposed reconsideration (should this regulatory request be granted). The petitioner assumes that further regulatory deliberation to develop final language, and development of any online assets to assist the public in understanding new regulation, would take place prior to July 1, 2024 when the regulation is proposed to take effect.

(b) The reason for the request.

The reason for the request is described in this Rationale section (Section 4 of this completed form being submitted to the Commission). In part, the reason for the request is because of an improper decision-making process in the years leading up to the February 8, 2023 decision, but also because the agency's determination denying Petition 2021-007 was not supported by substantial evidence provided by staff or DFW, participants before the Commission and the Petition author were kept from fair and equal participation during the February 8, 2023 hearing, and the Petition was publicly misrepresented by the Department (DFW) on October 13, 2022. Furthermore, although Government Code 11340.7(a) requires that action to set a public hearing or deny a petition be taken within 30 days after receipt of a petition, this did not occur with Regulatory Petition 2021-007, as the Petition was originally submitted on May 10, 2021 (resubmitted per staff request on May 18, 2021), but did not receive a final public hearing for decision until February 8, 2023, after a significant delay. As has been noted elsewhere in this reconsideration request, the Petition was not even noted on the Commission's original agenda as issued, but was later thrown into the agenda in a late revision that was apparent on January 27th, 2023 (about 12 days prior to the decision date), and the materials associated with the agenda (such as any presentations and items that would provide a basis for the decisions) were not available until almost immediately before the meeting, depriving the public of seeing what rationale the agency might use for its decisions prior to the hearing. Critically, the decision made on Petition 2021-007 (on Feb. 8, 2023) does not give weight to relevant law as passed (SB 856, 2021-2022) as that law pertains to the Petition and the Petition author's request for implementation consistent with the law – which would be in the public interest and would provide greater opportunity for advancement of conservation funding and introduction of more individuals to hunting.

(c) Reference to the authority of the state agency to take the action requested.

Per Government Code 11340.7 (as required in 11340.7(c)j for reconsideration):

the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved.

Staff based the recommendation for denial on “B5,” an exhibit which was from the DFW, and which was dated December 27, 2022. This Memorandum, provided by the DFW, is one example of how there could not have been a proper decision-making in this case since the DFW was relied upon effectively to make the decision, but the memorandum which the Commission staff cites as the basis for its decision was generated prior to the year in which the public hearing actually took place, indicating that there could not have been sincere DFW or Commission staff consideration of public input in 2023 on the issue of this petition prior to the hearing on February 8, 2023.

In the DFW memo of December 27, 2022, in which Charlton Bonham (with said memo, labeled B5 in exhibit seeming to have been co-authored by Chad Dibble and signed off on by Mr.

Bonham) provide their recommendation for denial of Regulatory Petition 2021-007, they state in part (on page 2 of the memorandum), quoting from my regulatory petition:

(see page following)

"Alternatively,

a. the Commission could make a change that would require .357 caliber minimum for BB devices to hunt wild boar (this would not alter any California lead free regulations) and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds)."

The Department states in its recommendation memorandum, which was provided in December 2022 (which could not have possibly taken into account any public input in 2023 prior to the February 8, 2023 hearing at which the decision was made),

"With respect to altering the current .40 caliber minimum designation as identified in Section 353(c), the Department believes .40 caliber projectiles are required only with respect to the use of muzzleloading rifles. For general take of big game with a rifle, the requirement is for centerfire cartridges with softnose or expanding projectiles; there is no specific caliber required. Similarly, with respect to the alternative identified in the second request, the Department believes that regulating non-muzzleloader firearms by caliber is not warranted,**nor is it for air rifles to hunt wild pig since that method of take is not allowed.** Therefore, the Department does not believe additional clarification is needed in Section 353(c) as to the allowable methods of take of wild pig."

A simple reading of this shows that the DFW after years of assessing my proposed regulatory petition lacks even the most basic analytical presentation and ability to provide rationale. Their recommendation is simply to deny because, in their words, they don't want there to be "**air rifles to hunt wild pig since that method of take is not allowed.**" (The minimum caliber recommendation is a standard which is commonly found in industry documents as corresponding to many air rifles which are used for ethical take of a wild pig assuming appropriate power is provided for the device.)

This is despite the fact that the Commission is allowed to change the method of take and the DFW is not authorized to do so, and the State law provides that wild pig will not be big game but rather "exotic game mammal" by mid-2024, which means simply that the Commission can approve the proposed regulatory petition (in the Element of "requiring .357 caliber minimum for BB devices to hunt wild boar (this would not alter any California lead free regulations) and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds)" and delay authorizing the regulatory interpretation change and implementation until mid-2024 when SB 856 (2021-2022) makes wild pig an "exotic game mammal." Specifically, Section 4 of SB 856, for July 1, 2024) amending the Fish and Game Code via SB 856 (2021-2022), at 3004.5(b), and Section 13 of SB 856, for July 1, 2024) amending the Fish and Game Code via SB 856 (2021-2022), at Sections 3950(a-c), Fish and Game Code, will cause Fish and Game Code to read as of July 1, 2024: (wild pig will not be game mammals):

"(b) Except as provided in subdivision (j), and as soon as is practicable as implemented by the commission pursuant to subdivision (i), but by no later than July 1, 2019, nonlead ammunition, as determined by the commission, shall be required when taking all wildlife, including game mammals, game birds, nongame birds, and nongame mammals, with any **firearm.**"

(...)

"(a) Game mammals are: deer (genus *Odocoileus*), elk (genus *Cervus*), prong-horned antelope (genus *Antilocapra*), black and brown or cinnamon bears (genus *Euarctos*), mountain lions (genus



Felis), jackrabbits and varying hares (genus *Lepus*), cottontails, brush rabbits, and pygmy rabbits (genus *Sylvilagus*), and tree squirrels (genus *Sciurus* and *Tamiasciurus*).

(b) Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) are game mammals only for the purposes of sport hunting described in subdivision (b) of Section 4902.

(c) This section shall become operative on July 1, 2024.

Additionally, per 14 CCR 475, “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.” As such, as one Commissioner expressed concern over introduction of lead based ammunition due to use of BB devices prior to the decision on February 8, 2023, it is appropriate to refer to Cal. Code Regs. Tit. 14, § 250.1 - Prohibition on the Use of Lead Projectiles and Ammunition Using Lead Projectiles for the Take of Wildlife. These State regulations do not preclude the use of BB devices of .357 or greater such as but not limited to the Texan SS (or the Sam Yang BB device, which uses the Eco-Slug, a non-lead item which is presently of low availability in the market), but the existing regulations do prohibit the use of lead ammunition in BB devices in some situations – when they are intended to operate as shotguns when taking non-game mammals. (see Cal. Code Regs. Tit. 14, § 250.1 (d)(2)(D), and Fish and Game Code 4150). By this reading, the use of lead shot for non-game mammals would still not be allowed if the Commission were to approve the proposal (and if it were to take effect July 1, 2024 concurrent with SB 856), which would mean that BB devices operating as shotguns would still not be able to use lead shot in pursuit of non-game mammals (just as is the case now), but BB devices such as PCP rifles (Texan SS, Benjamin Bulldog, Sam Yang, etc.) would be able to be legally used to take wild pig (again, if the Commission approves this reconsideration request which seeks a new method of take that would be effective July 1, 2024).

Because SB 856 would revise and recast the provisions applicable to wild pigs by, among other things, specifying that the wild pig is not a game mammal or nongame mammal, but rather is an exotic game mammal, the regulation described above would not limit wild pig hunters using BB devices – they would be able to use either BB devices which can fire shotgun-like slugs, or slugs that are similar to centerfire rifle bullets, and the materials would be whatever is available in the market. (If hunting wild pig, As more lead-free slugs become available in the market, more BB device hunters would be able to use them. However, the regulations do limit those who would hunt non-game mammals with BB devices, as can be seen from a close reading of California regulations. As the Petitioner has suggested before, there should not be new limits placed on BB device hunters, but rather, this petition reconsideration should be granted, and as to the materials that are used in the pellets or slugs by BB device users, it is suggested that the Commission ask the State to help provide grants to businesses that are exploring new and different types of lead free ammunition production, rather than limit the types that hunters can currently use. An approval is appropriate, as more hunters for wild pig will help add needed funds for conservation and maintenance of public lands.

It is assumed as part of the process that the approval of this, if granted is part of a larger process whereby the Commission provides additional language prior to the July 1, 2024 date for the benefit of the public which would involve greater deliberation and study by the Commission.

SECTION II: Optional Information

The Petitioner relates that he recently spoke with a local business owner who specializes in pork related products. Because of current regulations, the business owner has to ship meat in from faraway states, and business costs in California relating to the restaurant business (and lobbying that has caused much of the power over food to be held in the hands of a few groups and corporations) has caused the business owner to decide that he will close his business before long. Particularly since California's Prop 12 hit, the impacts on the market in California have hit the ability of people in the market to obtain everything from eggs to pork. People in California also have struggled merely to ask for something that has been normalized in many other states: to obtain a new method of take to hunt which would facilitate entry of new hunters and allow people a different method to procure wild pig when they are able and ready to hunt. The request for reconsideration is reasonable and timely. The Commission should act to approve.

5. Date of Petition: 2/15/2023

6. Category of Proposed Change

- ☐ Sport Fishing
- ☐ Commercial Fishing
- ☒ Hunting
- ☐ Other, please specify: [Click here to enter text.](#)

7. 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): Amend Title 14 Section(s): Division 1, Subdivision 2, Sections 350, 353, and 353(c)

☐ Add New Title 14 Section(s): [Click here to enter text.](#)

☐ Repeal Title 14 Section(s): [Click here to enter text.](#)

8. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition 2021-007

Or ☐ Not applicable.

9. 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: July 1, 2024

10. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Please see Proposed Reconsideration text above.

11. 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: If approved, this proposed reconsideration will have a positive revenue impact for big game projects, and will facilitate maintenance and conservation of public lands in California.

12. Forms: If applicable, list any forms to be created, amended or repealed:

None / N/A.



SECTION 3: FGC Staff Only

Date received: February 16, 2023

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: _____

FGC action:

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

Tracking Number