

## Committee Staff Summary for May 16, 2024

**4. Take of Nongame Mammals****Today's Item****Information** ☒**Action** ☐

Discuss concerns with, and the regulatory framework for, the take of nongame mammals.

**Summary of Previous/Future Actions**

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|-----------------------------|--------------------------|
| • Initial discussion        | September 19, 2023; WRC  |
| • <b>Today's discussion</b> | <b>May 16, 2024; WRC</b> |
| • Discussion                | September 16, 2024; WRC  |

**Background**

California Fish and Game Code Section 4150 provides that "A mammal occurring naturally in California that is not a game mammal, fully protected mammal, or fur-bearing mammal is a nongame mammal." Nongame mammals in California include species such as opossums, cottontail rabbits, raccoons, coyotes, red foxes, weasels, moles, and various rodents. Per Fish and Game Code Section 4152, nongame mammals that are causing damage may be taken for depredation purposes. However, an ambiguity exists whether nongame mammals (along with other animals listed in Section 4152) that are not causing property damage may be taken.

At its September 2023 meeting, WRC held a discussion regarding the indiscriminate take of nongame mammals and some of the ambiguities in statute, regulation and Commission policy (see Exhibit 1 for further background). The discussion included an examination of the operation of Fish and Game Code, California Code of Regulations (Title 14), and Commission policies and how they are being employed in practice. See Exhibits 2 through 4 for the text of some laws and policies relevant to the topic related to nongame mammal.

Today, WRC will continue the discussion on the issues surrounding the take of nongame mammals. Because this is a developing topic, Commission staff anticipates further discussion at future meetings.

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

1. [Staff summary from September 2023 WRC meeting](#) (for background purposes only)
2. [Three Sections of California Fish and Game Code Relevant to the Take of Nongame Mammals](#), extracted January 2, 2024
3. [Section 472 of Title 14 of the California Code of Regulations, Relevant to the Take of Nongame Mammals](#), extracted January 2, 2024
4. [Commission Policies Directly Related to the Take of Nongame Mammals](#), dated January 2, 2024

**Committee Direction/Recommendation (N/A)**

For background purposes only

## COMMITTEE STAFF SUMMARY FOR SEPTEMBER 19, 2023 WRC

**8. TAKE OF NONGAME MAMMALS****Today's Item**Information ☒Action ☐

Discuss issues and the regulatory framework regarding the indiscriminate take of nongame mammals.

**Summary of Previous/Future Actions (N/A)****Background**

California Fish and Game Code Section 4150 provides that "A mammal occurring naturally in California that is not a game mammal, fully protected mammal, or fur-bearing mammal is a nongame mammal." Nongame mammals in California include species such as opossums, cottontail rabbits, raccoons, coyotes, red foxes, weasels, moles, and various rodents. The section further states that "...it is unlawful for any person to trap any nongame mammal for purposes of recreation or commerce in fur."

Per Fish and Game Code Section 4152 (see Exhibit 1, slide 9), nongame mammals that are causing damage may be taken for depredation purposes. However, an ambiguity exists whether nongame mammals (along with other animals listed in Section 4152) that are *not* causing property damage may be taken. The ambiguity ultimately rests with whether the phrase "that are found to be injuring growing crops or other property" is to apply to only red fox squirrels, or nongame mammals in general (along with the other species in the list). The practical implication regarding this ambiguity is whether, outside of hunting for sport, nongame mammals that are not damaging crops or property may be taken.

The Commission's regulations in Section 472 currently state, in part, "The following nongame birds and mammals may be taken at any time of the year and in any number except as prohibited in Chapter 6: English sparrow, starling, domestic pigeon (*Columba livia*) except as prohibited in Fish and Game Code section 3680, coyote, weasels, skunks, opossum, moles and rodents (excluding tree and flying squirrels, and those listed as furbearers, endangered or threatened species). In other words, per its regulation, the Commission has determined that certain nongame mammals may be taken at any time and in any number. On the other hand, the Commission Depredation Control Policy states, "In the event that some birds or mammals may cause injury or damage to private property, depredation control methods directed toward offending animals may be implemented." Thus, the Commission's own policy reflects some ambiguity.

Today, WRC will receive a presentation from Rebecca Dmytryk of Humane Wildlife Control Inc. and Emergency Wildlife Services (Exhibit 1) and hold an initial discussion about issues surrounding the take of nongame mammals. Because this is a developing topic in its early stages, Commission staff anticipates further discussion at future meetings.

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

For background purposes only

COMMITTEE STAFF SUMMARY FOR SEPTEMBER 19, 2023 WRC

**Exhibits**

1. [Public presentation](#)

**Commission Direction/Recommendation (N/A)**

# Three Sections of California Fish and Game Code Relevant to the Take of Nongame Mammals

*Extracted by California Fish and Game Commission staff on January 2, 2024*

To help facilitate conversation, this document provides extracts from the California Fish and Game Code related to the take of nongame mammals for ease of reference. Footnotes are added for convenience and are not part of the official statutes, nor are they a complete recapitulation of the law.

Please refer to complete statutory text at <https://leginfo.legislature.ca.gov/faces/home.xhtml> for a more comprehensive understanding of the particular code section(s).

## **Section 4152. Taking of Nongame Mammals Found Injuring Crops or Property**

- (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 30071, except when providing trapping services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.
- (b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.
- (c) This section does not apply to bobcats.

## **Section 4180. Taking of Fur-Bearing Mammals Injuring Property**

- (a) Except as provided for in Section 4005, fur-bearing mammals that are injuring property may be taken at any time and in any manner in accordance with this code or regulations made pursuant to this code. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.
- (b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

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<sup>1</sup> Requires a license or entitlement for the taking of birds or mammals.

## **Section 4005. Persons Required to Procure Trapping Licenses; Qualifications**

- (a) Except as otherwise provided in this section, every person who traps fur-bearing mammals or nongame mammals, designated by the commission, shall procure a trapping license. Raw fur of fur-bearing and nongame mammals may not be sold. For purposes of this article, “raw fur” means any fur, pelt, or skin that has not been tanned or cured, except that salt-cured or sun-cured pelts are raw furs.
- (b) The department shall develop standards that are necessary to ensure the competence and proficiency of applicants for a trapping license. A person shall not be issued a license until the person has passed a test of their knowledge and skill in this field.
- (c) Persons trapping mammals in accordance with Section 4152 or 4180 are not required to procure a trapping license except when providing trapping services for profit.
- (d) No raw furs taken by persons providing trapping services for profit may be sold.
- (e) The license requirement imposed by this section does not apply to any of the following:
  - (1) Officers or employees of federal, county, or city agencies or the department, when acting in their official capacities, or officers or employees of the Department of Food and Agriculture when acting pursuant to the Food and Agricultural Code pertaining to pests or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.
  - (2) Structural pest control operators licensed pursuant to Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code, when trapping rats, mice, voles, moles, or gophers.
  - (3) Persons and businesses licensed or certified by the Department of Pesticide Regulation pursuant to Chapter 4 (commencing with Section 11701) and Chapter 8 (commencing with Section 12201) of Division 6 of, and Chapter 3.6, (commencing with Section 14151) of Division 7 of, the Food and Agricultural Code, when trapping rats, mice, voles, moles, or gophers.
- (f) Except for species that are listed pursuant to Chapter 1.5 (commencing with Section 2050)<sup>2</sup> of Division 3 or Chapter 8 (commencing with Section 4700)<sup>3</sup>, nothing in this code or regulations adopted pursuant thereto shall prevent or prohibit a person from trapping any of the following animals:
- (g) Gophers.
  - (1) House mice.
  - (2) Moles.
  - (3) Rats.
  - (4) Voles.

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<sup>2</sup> Refers to the California Endangered Species Act.

<sup>3</sup> Refers to fully protected animals.

## Section 472 of Title 14 of the California Code of Regulations, Relevant to the Take of Nongame Mammals

*Extracted by California Fish and Game Commission staff on January 2, 2024*

To help facilitate conversation, this document provides Section 472 of Title 14 of the California Code of Regulations; Title 14 is where regulations promulgated by the California Fish and Game Commission may be found. Footnotes are added for convenience and are not part of the regulation or referenced statutes, nor are they a complete recapitulation of the law.

Please refer to complete regulatory text (<https://govt.westlaw.com/calregs/>) or statutory text (<https://leginfo.legislature.ca.gov/faces/home.xhtml>) for a more comprehensive understanding of the particular section(s).

### **Section 472. General Provisions.**

Except as otherwise provided in Sections 478<sup>1</sup>, 485<sup>2</sup>, and subsections (a) through (d) below, nongame birds and mammals may not be taken.

- (a) The following nongame birds and mammals may be taken at any time of the year and in any number except as prohibited in Chapter 6: English sparrow, starling, domestic pigeon (*Columba livia*) except as prohibited in Fish and Game Code section 3680<sup>3</sup>, coyote, weasels, skunks, opossum, moles and rodents (excluding tree and flying squirrels, and those listed as furbearers, endangered or threatened species).
- (b) Fallow, sambar, sika, and axis deer, of either sex, may be taken concurrently with the general deer season and on properties where an authorized deer, elk, or pronghorn antelope season is open. There is no bag or possession limit for deer taken pursuant to this subsection.
  - (1) It shall be unlawful to take any deer pursuant to this subsection without a valid hunting license in possession, but no tag, stamp, or additional endorsement of any kind is required.
  - (2) It shall be unlawful to detach or remove only the head, hide, or antlers of any deer taken pursuant to this subsection, or to leave through carelessness or neglect any portion of the flesh normally eaten by humans to go to waste.
- (c) Aoudad, mouflon, tahr, and feral goats may be taken all year.
- (d) American crows (*Corvus brachyrhynchos*)
  - (1) May be taken only under the provisions of Section 485 and by landowners or tenants, or by persons authorized in writing by such landowners or tenants, when American crows are committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or

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<sup>1</sup> Prohibitions on take of bobcats.

<sup>2</sup> Regulates the take of crows.

<sup>3</sup> Refers to racing pigeons.

other nuisance. Persons authorized by landowners or tenants to take American crows shall keep such written authorization in their possession when taking, transporting or possessing American crows. American crows may be taken only on the lands where depredations are occurring or where they constitute a health hazard or nuisance. If required by Federal regulations, landowners or tenants shall obtain a Federal migratory bird depredation permit before taking any American crows or authorizing any other person to take them.

- (2) American crows may be taken under the provisions of this subsection only by firearm, bow and arrow, falconry or by toxicants by the Department of Food and Agriculture for the specific purpose of taking depredating crows. Toxicants can be used for taking crows only under the supervision of employees or officers of the Department of Food and Agriculture or federal or county pest control officers or employees acting in their official capacities and possessing a qualified applicator certificate issued pursuant to sections 14151-14155 of the Food and Agriculture Code. Such toxicants must be applied according to their label requirements developed pursuant to sections 6151-6301, Title 3, California Code of Regulations.
- (e) Pursuant to Fish and Game Code Section 2003<sup>4</sup>, it is unlawful to offer any prize or other inducement as a reward for the taking of nongame mammals in an individual contest, tournament, or derby.

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<sup>4</sup> Refers to the offering of prizes or other inducements for the taking of wildlife.

# **California Fish and Game Commission**

## **Commission Policies Directly Related to the Take of Nongame Mammals**

*January 2, 2024*

### **Depredation Control**

It is the policy of the Fish and Game Commission that:

All wildlife species shall be maintained in harmony with available habitat whenever possible. In the event that some birds or mammals may cause injury or damage to private property, depredation control methods directed toward offending animals may be implemented. Should such depredation be upon wildlife species being intensively managed, the Department may institute appropriate depredation control methods directed towards the offending animals.

### **Terrestrial Predator Policy**

It is the policy of the Fish and Game Commission that:

- I. For the purposes of this policy, terrestrial predators are defined as all native wildlife species in the Order Carnivora, except those in the Family Otariidae (seals, sea lions), the Family Phocidae (true seals), and sea otters (*Enhydra lutris*).
- II. Pursuant to the objectives set forth in Section 1801 of Fish and Game Code, the Commission acknowledges that native terrestrial predators are an integral part of California's natural wildlife and possess intrinsic, biological, historical, and cultural value, which benefit society and ecosystems. The Commission shall promote the ecological, scientific, aesthetic, recreational, and educational value of native terrestrial predators in the context of ecosystem-based management, while minimizing adverse impacts on wildlife and reducing conflicts that result in adverse impacts to humans, including health and safety, private property, agriculture, and other public and private economic impacts.
- III. The Commission further recognizes that sustainable conservation and management strategies are necessary to encourage the coexistence of humans and wildlife. It is, therefore, the policy and practice of the Fish and Game Commission that:
  - A. Existing native terrestrial predator communities and their habitats are monitored, maintained, restored, and/or enhanced using the best available science. The department shall protect and conserve predator populations.
  - B. Native terrestrial predator management shall be consistent with the goals and objectives of existing management and conservation plans. Management strategies shall recognize the ecological interactions between predators and other wildlife species and consider all available management tools, best available science, affected habitat, species, and ecosystems and other factors. The department shall provide consumptive and non-consumptive recreational opportunities. The recreational take of native terrestrial predator species shall be managed in a way that ensures sustainable populations of predator and prey are maintained.



- C. Human-predator conflict resolution shall rely on management strategies that avoid and reduce conflict that results in adverse impacts to human health and safety, private property, agriculture, and public and private economic impacts. Efforts should be made to minimize habituation of predators especially where it is leading to conflict. Human safety shall be considered a priority. Management decisions regarding human-predator conflicts shall evaluate and consider various forms of lethal and nonlethal controls that are efficacious, humane, feasible and in compliance with all applicable state and federal laws and regulations. A diverse set of tools is necessary to avoid, reduce, and manage conflict. To ensure long-term conservation of predators and co-existence with humans and wildlife, all legal tools shall be considered when managing to address conflicts.