

State of California  
California Department of Fish and Wildlife  
Initial Statement of Reasons for Regulatory Action

Add Section 685  
Title 14, California Code of Regulations  
Re: Prescribed Herbivory on Department Lands

I. Date of Initial Statement of Reasons: July 16, 2024

II. Dates and Locations of Scheduled Public Hearing

Date: September 24, 2024

Meeting details will be made available at:  
<https://wildlife.ca.gov/Notices/Regulations/Prescribed-Herbivory> at least seven days in advance of the meeting.

Location: Teleconference/Webinar

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 and subsection references in this document are to Title 14 of the California Code of Regulations (CCR).

This proposed regulatory action clarifies the Department of Fish and Wildlife's (Department) authority to enter into service contracts for vegetation treatment activities using prescribed herbivory treatments, including targeted grazing, for fuels reduction and/or habitat restoration purposes on Department-managed lands. Furthermore, the proposed amendments will also specify the types of animals that can be used for prescribed herbivory treatments. The proposed changes are necessary to support and expand fire resiliency work in diverse vegetation communities on Department lands across the state. In some circumstances, prescribed herbivory is a tool that is more feasible, cost-effective and less damaging to the environment than mechanical removal of overgrown vegetation.

## **BACKGROUND**

The Department is currently implementing traditional grazing treatments on approximately 80,000 acres per year, and seeks to increase that amount to reduce wildfire risk, improve habitat quality, and help meet statewide goals set by the Governor's Wildfire and Forest Resilience Task Force, EO N-82-20 (30X30 [Initiative](#)), and Natural and Working Lands Strategies. To date, over \$80 million in one-time funding has been allocated to the Department to expand fuels reduction treatments across the state. Acres treated and specific activities conducted must be reported on a bi-annual basis to CNRA and is available for public review at [www.planscape.org](http://www.planscape.org). The Department and other state agencies are expected to quickly expand wildfire treatments to demonstrate the value of the substantial investment of one-time funds. Prescribed herbivory is a critical tool for treating the over 1.1 million acres of land the Department manages to reduce the risk of catastrophic wildfires.

While both targeted grazing and traditional livestock management use the same principles, they differ in their goals. Traditional livestock management is focused on sustainable livestock production and

reproduction, whereas targeted grazing has a primary purpose of changing vegetation composition or structure. Land use agreements that use a traditional grazing framework are currently the primary avenue for non-mechanical excess vegetation removal on Department lands. Under that model, lessees pay the Department to graze the grass so their cattle can consume that energetic food resource to grow and support reproduction.

Targeted prescribed herbivory can provide both fuels reduction and desired ancillary benefits, such as increasing native plant densities and decreasing non-native species that might be unpalatable to cattle. The Department intends to utilize prescribed herbivory in different ways and conditions (e.g., # animals, type of animals, timing, type of vegetation species grazed) than are typical under the current standard revenue-generating land use agreements. Goat and sheep grazers, for example, are usually paid to bring their animals onto a property. They will generally consume more target species than cows at a lower cost. These animals are also more suited to working in riparian areas, which is a focal habitat type for fuels reduction for the Department.

Multiple prescribed herbivory projects will be implemented and expanded statewide in the next 5-10 years. The clarified authority provided by the proposed regulatory amendments will expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders that can be directed to graze site in ways that reduces fuels fire risk and also provides benefits to native plants and wildlife.

## **CURRENT CODE AND REGULATIONS**

Land use agreements for prescribed herbivory have primarily been used to remove excess grass, and lessees pay the Department to have access to and consume that resource. However, in some cases herbivory that provides both fuels reduction and desired ancillary benefits, such as increasing native plants and decreasing (often unpalatable) non-native species, requires payment to the lessee.

Current laws governing the Department's authority to graze animals and enter into agreements for habitat restoration and management on Department's lands are as follows:

Fish and Game Code (FGC) Section 1010 states "The department, by and with the approval of the Department of General Services (DGS), may sell grazing permits or otherwise dispose of excess vegetation or other products, produced on lands acquired by the department."

FGC Section 1501.5 states "The department may enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities whenever the department finds that the contracts will assist in meeting the department's duty to preserve, protect, and restore fish and wildlife."

## **PROPOSED REGULATIONS**

### **Add Section 685. Prescribed Herbivory on Department Lands**

The proposal would add a new section to clarify the Department's authority to enter into service contracts for prescribed herbivory treatments. This proposed addition of Section 685 would implement FGC Section 1010 to allow for the Department to "...otherwise dispose of excess vegetation..."

685(a) – Since the grazers would be complying with specific prescriptive guidance on locations, timing and desired ecological outcomes, a payable service contract is the most appropriate option and will increase the opportunity for use of this tool on Department lands.

This subsection is necessary to clarify the authorized contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services and can be directed to graze specific sites in ways that reduce wildfire risk and provide benefits to native plants and wildlife.

685(b) – This subsection states which livestock may be used for prescribed herbivory treatments. Goats and sheep may be used for prescribed herbivory service contracts, as well as cattle. Cattle are primarily used for traditional grazing agreements, but allowance of goats and sheep allows flexibility to increase the utility of targeted grazing in areas with undesirable vegetation that cattle won't consume. This subsection is necessary to make clear to farmers and livestock herders which animals may be used for such treatments, and thus which grazers would qualify for entering into service contracts.

(b) Goals and Benefits of the Regulation

The goal of this regulation is to clarify the Department's authority to enter into service contracts for vegetation/fuels management and expand the contracting mechanisms available to the Department to work with different types of grazers. This proposal would provide Department lands managers with more tools to reduce the risk of catastrophic wildfires on the 1.1 million acres of land the Department manages and will expand opportunities for habitat restoration. These prescribed herbivory services, including services provided by goat and sheep herders, can occur in ways that reduces fire risk and provide benefits to native plants and wildlife such as increased biodiversity and non-native species control.

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

Authority: Fish and Game Code Section 1010

Reference: Fish and Game Code Sections 1010 and 1501.5

(d) Specific Technology or Equipment Required by Regulatory Change: None

(e) Identification of Reports or Documents Supporting Regulation Change

California Board of Forestry and Fire Protection, 2015. Prescribed Herbivory For Vegetation Treatment Projects, prepared by the Range Management Advisory Committee. [Available from https://bof.fire.ca.gov/media/nc4n1xqj/4-4-rmac-prescribed-herbivory-white-paper.pdf](https://bof.fire.ca.gov/media/nc4n1xqj/4-4-rmac-prescribed-herbivory-white-paper.pdf)

State of California, 2021. Governor's Wildfire and Forest Resilience Action Plan, available from: <https://wildfiretaskforce.org/action-plan/>

State of California, 2020. Executive Order (EO) 82-20 (California's 30 x 30 initiative) –available from <https://www.gov.ca.gov/wp-content/uploads/2020/10/10.07.2020-EO-N-82-20-.pdf>

Air Resources Board, 2019. Draft California 2030 Natural and Working Lands Climate Change Implementation Plan (Natural and Working Lands Strategies). 86 pages, available from: <https://ww2.arb.ca.gov/resources/documents/nwl-implementation-draft>

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

None

#### IV. Description of Reasonable Alternatives to Regulatory Action

##### (a) Alternatives to Regulation Change

No alternatives were identified that would have the same desired regulatory effect.

##### (b) No Change Alternative

Without the proposed changes, the outstanding issues concerning the regulations currently governing the Department's ability to use prescribed herbivory as a tool would remain unaddressed.

#### V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment since the regulation pertains to the ability to enter into agreements, and with whom; individual site impacts due to grazing activities are examined through the land management planning process. Therefore, no mitigation measures are needed.

#### 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 Department does not anticipate that the proposed action will have any statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes clarify the Department's authority to enter into service contracts for vegetation treatment activities using prescribed herbivory for fuels reduction and/or habitat restoration purposes on Department-managed lands. This action will increase the opportunities for commercial herbivory providers and thus, will likely induce positive economic impacts.

##### (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 Department does not anticipate adverse impacts on the creation or elimination of jobs within the state. The Department does not anticipate adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed changes are to provide clarification of the Department's authority to enter into service contracts for vegetation treatment activities using prescribed herbivory for fuels reduction and/or habitat restoration purposes on Department-managed lands.

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could positively impact job creation, induce the creation of new businesses, or the expansion of businesses in California. The Department does not anticipate any benefits to the health and welfare of California residents or to worker safety.

The Department anticipates benefits to the State's environment through improved procedures to support and expand fire resiliency work in diverse vegetation communities on Department lands across the state.

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

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

The Department anticipates increases in expenditures for prescribed herbivory contracts that will remain within existing budgets and resources. No changes to costs or savings to other state agencies or in federal funding are anticipated. See STD 399 Addendum for more detail.

(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

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

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could positively impact job creation within the State.

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

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could induce the creation of new businesses with no elimination of existing businesses within the State.

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

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could induce the expansion of businesses currently doing business within the State.

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

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

(e) Benefits of the Regulation to Worker Safety

The Department does not anticipate any benefits to worker safety from the proposed regulations because there is no impact on working conditions.

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

The Department anticipates benefits to the state's environment through improved procedures to support and expand fire resiliency work in diverse vegetation communities on Department lands across the state.

## Informative Digest/Policy Statement Overview

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Multiple prescribed herbivory projects will be implemented and expanded statewide in the next 5-10 years. The clarified authority provided by the proposed regulatory amendments will expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders that can be directed to graze site in ways that reduces fuels fire risk and also provides benefits to native plants and wildlife.

In order to clarify authority and expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders, the Department proposes to add the following section:

Section 685. Prescribed Herbivory on Department Lands.

(a) For the purposes of vegetation fuels reduction or restoration of habitat, and for the benefit of the State, the department may enter into service contracts for prescribed herbivory treatments, including targeted grazing.

(b) Cattle, goats, and sheep may be used for prescribed herbivory treatments.

Benefit of the Regulations:

The Department anticipates that this regulation will have positive impacts on reducing wildfire fuel risks, while providing continued opportunities to increase native plant densities and decreasing non-

native species, especially those that might be unpalatable to cattle. The Department intends to utilize prescribed herbivory in different ways and conditions (e.g., number of animals, type of animals, timing, type of vegetation species grazed) than are typical under the current standard revenue-generating land use agreements. The clarified authority provided by the proposed regulatory amendments will expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders that can be directed to graze site in ways that reduces fuels fire risk and also provides benefits to native plants and wildlife.

#### Consistency and Compatibility with Existing Regulations:

The Legislature, through Fish and Game Code Section 1010, has authorized the Department, by and with the approval of the Department of General Services, to sell grazing permits or otherwise dispose of excess vegetation or other products, produced on lands acquired by the Department. Additionally, Fish and Game Code Section 1501.5 provides authority to enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities whenever the department finds that the contracts will assist in meeting the department's duty to preserve, protect, and restore fish and wildlife. The proposed regulations are neither inconsistent nor incompatible with existing state regulations in Title 14. The Department has searched the regulations in all other titles of California Code of Regulations and has found no other regulations that set forth the requirements in the Department's proposed regulation.