

## Committee Staff Summary for September 12, 2024 WRC

**5. 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**

- Initial discussion September 19, 2023; WRC
- Discussion May 16, 2024; WRC
- **Today's discussion September 12, 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 previous meetings, WRC held discussions regarding the indiscriminate take of nongame mammals and some of the ambiguities in statute, regulation and Commission policy. The discussions 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 1 through 3 for the text of some laws and policies related to nongame mammals.

*Today, staff will recommend that WRC continue this item to the January 2025 WRC meeting to allow staff and the Department time to complete internal dialogue regarding this issue. Staff believes it will be able to more fully articulate the multiple issues at hand during WRC's next meeting.*

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

1. [Three Sections of California Fish and Game Code Relevant to the Take of Nongame Mammals](#), extracted January 2, 2024
2. [Section 472 of Title 14 of the California Code of Regulations, Relevant to the Take of Nongame Mammals](#), extracted January 2, 2024
3. [Commission Policies Directly Related to the Take of Nongame Mammals](#), dated January 2, 2024

**Committee 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:
  - (1) Gophers.
  - (2) House mice.
  - (3) Moles.
  - (4) Rats.
  - (5) 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.

LEGISLATIVE COUNSEL'S DIGEST

SB 1480, as amended, Nejedly. Birds and mammals: predators.

Under existing law, fur-bearing mammals and nongame mammals which are injuring property may be taken at any time and in any manner, except that a leg-hold steel-jawed trap with saw-toothed or spiked jaws or a leg-hold steel-jawed trap with a spread of 5½ inches or larger without offset jaws may not be used.

This bill would:

(1) **Make it unlawful to fail to visit and remove all mammals from traps used for the control of predatory mammals once every 24 hours, and make other specified provisions governing the use of traps generally, applicable to the taking of fur-bearing mammals, and nongame mammals, black-tailed jackrabbits, muskrats, and red fox squirrels, injuring crops or other property.**

(2) **Require steel-jawed or leg-hold traps used for the control of predatory nongame mammals other than moles, shrews, rats, mice, and gophers to be registered with the Department of Fish and Game, as specified, and require specified information to be reported to the department. The bill would authorize the department to require payment of a**

Introduced by Senator Nejedly

February 6, 1978

An act to amend Sections 4004, 4152, and 4180 of, to add Sections 3005.2, 4180.4, and 4180.6 to, and to add and repeal Chapter 11 (commencing with Section 4900) of Part 3 of Division 4 of, the Fish and Game Code, relating to birds and mammals, and making an appropriation therefor.

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(2) **Require steel-jawed or leg-hold traps used for the control of predatory mammals to be registered with the Department of Fish and Game, as specified, and require specified information to be reported to the department. The bill would authorize the department to require payment of a processing fee, not to exceed \$3. Under existing law any such moneys would be deposited in the Fish and Game Preservation Fund and continuously appropriated to the department.**



CONCURRENCE IN SENATE AMENDMENTS

AB 1729 (Water, Parks & Wildlife Committee)

As Amended September 6, 2007

Majority vote

ASSEMBLY: 76-0 (May 29, 2007) SENATE: 40-0 (September 10, 2007)

Original Committee Reference: W., P. & W.

**SUMMARY:** Omnibus bill that makes numerous technical and some substantive changes to update the Fish and Game Code.

The Senate amendments:

- 1) Reinstate language providing for expenditure of certain revenues upon appropriation of the Legislature.
- 2) Delete obsolete provisions of law relating to purchase of insurance during war time or for specific purposes for which the state is now self-insured.
- 3) Make technical changes to existing law relating to the Shared Habitat Alliance for Recreation Enhancement Program.
- 4) Reinstate a provision of law repealed in 2003 which authorizes the Department of Fish and Game (DFG) to contract with landowners for establishment of cooperative hunting areas subject to specified conditions, including a requirement that the boundaries be posted with a sign stating that legal hunting may be allowed if written permission is obtained from the owner, a requirement that DFG enforce trespass laws on the property, and authorizing the Fish and Game Commission (FGC) to establish regulations and set fees for management and control of hunting in these areas.
- 5) Reinstate a requirement in current law that DFG hold exotic animals captured at large for 72 hours.
- 6) Revise and clarify provisions recognizing as an affirmative defense to a violation of laws prohibiting the possession of certain bird feathers, if the possessor is a member of a Native American tribe and possesses the feathers for tribal, spiritual or cultural purposes.
- 7) Delete proposed changes to existing law authorizing a judge to order forfeiture of vessels or other motorized vehicles used in committing certain offenses, leaving that section as it is in current law.
- 8) Delete the proposed addition of rock doves (also known as domestic pigeons) from the list of nongame birds expressly authorized to be taken and possessed by a landowner, lessee or agent on land owned or leased by the landowner or lessee.
- 9) Delete proposed changes to the definition of a "loaded firearm," leaving that provision as it is under current law.

- 10) Extend to January 1, 2009 the date by which DFG is required to enter into memoranda of understanding with eligible local entities for inspection of wild animal facilities.
- 11) Delete the proposed addition of storm drains to a provision of existing law making it unlawful to place certain polluting materials into waters of the state.
- 12) Make other technical changes.

EXISTING LAW provides for regulation of fish and game by DFG and FGC, and contains numerous provisions governing the responsibilities of DFG, FGC, and persons regulated by these agencies.

AS PASSED BY THE ASSEMBLY, this bill:

- 1) Updated terminology in the code that is outdated, such as changing amphibia to amphibian, makes consistent references to licenses, tags and stamps throughout the code, defines various terms, and makes other conforming changes.
- 2) Repealed obsolete sections related to falconry licenses, permits and fees, and reconciles license year dates with hunting season dates.
- 3) Clarified that peace officers working for DFG must comply with training required by the Commission on Peace Officer Standards and Training.
- 4) Clarified that DFG is not prohibited from taking an animal that is a threat to public health and safety or for prevention or relief of suffering.
- 5) Required that licenses, tags and permits be filled out completely and accurately, and that stamps be affixed to license documents.
- 6) Clarified requirements relating to the purchase of license vouchers as a gift.
- 7) Clarified which types of artificial lighting devices are prohibited and which are authorized for use in taking of fish and wildlife.
- 8) Clarified what constitutes a loaded firearm for purposes of existing law prohibiting the possession of loaded firearms in vehicles on public highways, and expands the prohibition to include other public ways open to the public.
- 9) Expanded the types of weapons with which it is unlawful to enter private property without written permission for the purpose of taking birds, mammals or fish.
- 10) Repealed obsolete sections relating to possession and confinement of exotic wild cats covered by other more recently enacted sections of law.
- 11) Clarified violators are financially responsible for costs associated with seizure and holding of illegally possessed nonnative wild animals, and requires DFG if it captures a nonnative wild animal found at large to hold the animal for a minimum of 48 hours.

- 12) Made it unlawful to take birds or mammals with BB guns or crossbows while intoxicated.
- 13) Made it unlawful for any person to intentionally discharge any firearm or release any arrow or crossbow bolt over or across any public road or way open to the public in an unsafe manner.
- 14) Added Eurasian collared doves to the list of resident game birds. Clarified when a hunting license is required to take certain nongame birds such as starlings which may otherwise be taken on private property, and added rock doves (domestic pigeons) to that list.
- 15) Recognized the right of enrolled members of California and federally recognized Indian tribes to possess feathers of nongame birds for tribal cultural or spiritual purposes.
- 16) Deleted wolverines from the definition of fur-bearing mammals since this species is a fully protected mammal.
- 17) Allowed non-native red fox that are depredate crops to be taken and clarified that the taking of animals with steel jawed leg-hold traps is prohibited.
- 18) Clarified that it is a misdemeanor to purposely take any registered racing pigeon.
- 19) Extended the prohibition on the taking of salmon which have not voluntarily taken the bait or lure to all inland waters in California.
- 20) Clarified that it is unlawful to put pollutants into storm drains.
- 21) Made several changes related to sport and commercial fishing requirements.

FISCAL IMPACT: According to the Senate Appropriations Committee, minor offsetting costs and savings to DFG, and one time minor loss of special fund revenue due to date change for falconry license renewals.

COMMENTS: This bill is a Fish and Game code clean-up bill sponsored by DFG. This bill is the first comprehensive code clean-up bill introduced in several years and makes numerous changes to delete obsolete sections, update, clarify and add provisions needed to help DFG accomplish its mission. The changes are being proposed in order to produce a more concise, understandable and effective wording of the laws governing wildlife resources in California. This bill makes numerous technical and some substantive changes to the code.

The Senate amendments make technical changes and also removed two provisions that were opposed by some animal rights groups. One provision would have reduced the 72 hour hold requirement for exotic wild animals DFG captures at large to 48 hours. The Senate amendment restores the 72 hour requirement. The second provision added rock doves to the list of nongame species that may be taken by landowners on their own private property. The Senate amendment deleted this addition. The Senate amendment regarding cooperative hunting areas reinstates a prior statutory provision regarding an existing program that was incorrectly deleted from the code when the SHARE hunting program provisions were added.