

non-lead projectile alternatives or bury internal organs and trimmed meat resulting from field-dressing a carcass in condor range. Additionally, a recent study indicates that considerable fragmentation of lead projectiles in the body occurs when large mammals are killed. Another study reported that examination of lead exposure and mortality in condors indicated that lead isotope ratios detected in blood samples from California condors closely matched lead isotope ratios from local, available lead ammunition. These results have caused some to infer that lead from hunters' projectiles could be contributing to lead toxicity in the condor.

A court-issued settlement agreement of December 5, 2008 requires that, no later than September 1, 2009, the Fish and Game Commission will consider, as part of the Commission's regular review of method of take regulations, currently scheduled to begin in May of 2009, amending California Code of Regulations, Title 14, which prescribes the method of take for resident small game, to require the use of non-lead ammunition in the geographic areas described in Fish and Game Code Section 3004.5 (California condor range) for the take of the following species:

- jackrabbits and varying hares (genus *Lepus*);
- cottontail rabbits, brush rabbits, pigmy rabbits (genus *Sylvilagus*);
- tree squirrels (genus *Sciurus* and *Tamiasciurus*);

This Initial Statement of Reasons is intended to provide the Fish and Game Commission with two options, in addition to the recommended "no change" option, to consider:

- 1) **Option #1:** establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take jackrabbits, varying hares, cottontail rabbits, brush rabbits, pigmy rabbits, and tree squirrels within the area described in 3004.5 of the Fish and Game Code; or
- 2) **Option #2:** establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take any resident small game species (the same species as in #1, plus resident upland game bird species) as defined in Title 14, CCR Section 257, within the area described in 3004.5 of the Fish and Game Code. The following species would be included in Option #2:

- jackrabbits and varying hares (genus *Lepus*);
- cottontail rabbits, brush rabbits, pigmy rabbits (genus *Sylvilagus*);
- tree squirrels (genus *Sciurus* and *Tamiasciurus*);

- Chinese spotted doves, Eurasian collared-doves, ringed turtle-doves, of the family Columbidae;
- California quail and varieties thereof;
- Gambel's or desert quail;
- mountain quail or varieties thereof;
- blue grouse and varieties thereof;
- ruffed grouse, sage grouse (sage hens), white tailed ptarmigan;
- Hungarian partridges, red-legged partridges, including the chukar and other varieties;
- Ring-necked pheasants and varieties
Wild turkeys of the order Galliformes

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

Authority: Sections 200, 202, and 203, Fish and Game Code.

Reference: Sections 200, 202, 203, 203.1, 207, 2055, 3004.5, 3683, and 3950, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

Requires hunters to use projectiles containing no more than a specified percentage of lead (by weight) when taking certain resident small game mammals and birds within the range of the California condor specified in Fish and Game Code Section 3004.5.

(d) Identification of Reports or Documents Supporting Regulation Change:

None on file.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

The topic of lead ammunition has been an item of discussion at regularly scheduled Fish and Game Commission Meetings since February 2, 2007. The Fish and Game Commission held a special meeting on August 27, 2007 in Sacramento dedicated solely to the discussion of lead ammunition and potential impact on the condor. Although these discussions have some relevance to the taking of small game, they were focused on the potential harm relative to the taking of big game mammals.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change

There were no alternatives to the proposed project other than the options provided.

(b) No Change Alternative:

A reasonable alternative is no change to existing regulations within the range of the California Condor. This Initial Statement of Reasons and the options were prepared to satisfy a court settlement, as described above; and to provide the Commission with options. The “no change” alternative would maintain the possible, however highly unlikely, risk of indirect lead poisoning to the California condor from legal resident small game hunting activities. To date, no such evidence of indirect lead poisoning as a result of these activities has been documented.

The no change alternative has been the *status quo* in California for decades and there has been no documented evidence that hunting of resident small game with lead ammunition poses a risk to California condors because of the unlikely event that a small game animal carcass would be left in the field (which would be illegal) and the unlikely event that a condor would find such a small carcass if it were left in the field.

(c) Consideration of Alternatives:

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures required by the Regulatory Action:

The proposed regulatory action will have no significant impact on the environment; 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 regarding 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 proposal 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. While ammunition retailers may experience a reduction in sales, the impact is not expected to be significant because lead ammunition for hunting upland game would still be allowed in areas outside the condor range, and there would still be target shooting demands for lead ammunition in the condor range.

- (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:

Ammunition retailers not offering non-lead ammunition options will likely experience a reduction in sales and revenue. Those can be mitigated by including non-lead ammunition in their sales inventory. The demand for non-lead ammunition alternatives for a variety of purposes (enforcement, security, target practice) in addition to hunting is increasing.

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

Department inquiries indicate that although the number of manufacturers currently producing non-lead ammunition is limited and the price of non-lead ammunition is higher in cost than lead ammunition, neither of these factors will result in significant adverse cost impact to California's small-game hunters.

The requirement of non-lead ammunition for hunting of rabbits and squirrels within condor range will be an obstacle for some hunters. While non-lead shotgun ammunition is readily available, rifle ammunition typically used for small game mammals (.22 caliber) is just now coming into production, is likely to be unavailable for retail sale until sometime during 2009, and is anticipated to be more expensive.

Some upland game is taken with larger caliber ammunition. The difference in price for a box (20 rounds) of non-lead ammunition compared to lead ammunition varies depending on caliber. A popular caliber (.243 caliber) non-lead ammunition costs an

additional \$5.00 (22%) per box, compared to lead. Reloading bullets are also more expensive. Non-lead bullets (50 per box) cost 65% more than lead for .224 caliber.

When viewed as part of the total cost of a hunting trip however, (license, tags, food, lodging, fuel, carcass processing, etc.) the additional cost is not likely to be significant.

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

Minor costs of approximately \$20,000 per year for outreach materials, which will be absorbed in the Department's current budget.

There has been some concern from the public that decreased hunting license sales would result, and in turn, a decrease in Federal funding would be available to the state. The Department of Fish and Game has no data to substantiate that this will happen, although a survey of hunters in Fall 2006 suggested some would not buy hunting licenses if a regulatory change were made relative to hunting of big game.

- (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:

None

- (h) Effect on Housing Costs:

None

Informative Digest/Policy Statement Overview

The existing regulations provide for methods to be used to take small game, including rabbits, squirrels and resident upland game birds. Traditionally, projectiles (bullets) containing lead and lead shot have been used. The regulation changes proposed as options would require non-lead projectiles for resident small game hunting in the geographic area determined by the Fish and Game Commission (Commission) to reduce risk of indirect lead toxicity to free-ranging California condors. Lead-alternative projectiles are considered effective for hunting and are not considered to be toxic to the California condor.

The proposal will allow the Commission to consider whether to establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take resident small game.

The proposed rulemaking is intended to provide the Commission with two options to consider in addition to the recommended “no change” option:

1. **Option #1:** establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take jackrabbits, varying hares, cottontail rabbits, brush rabbits, pigmy rabbits, and tree squirrels within the area described in 3004.5 of the Fish and Game Code; or
2. **Option #2:** establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take any resident small game species (the same species as in #1, plus resident game bird species) as defined in Title 14, CCR, Section 257, within the area described in 3004.5 of the Fish and Game Code.

The following species would be included in Option #2:

- jackrabbits and varying hares (genus *Lepus*);
- cottontail rabbits, brush rabbits, pigmy rabbits (genus *Sylvilagus*);
- tree squirrels (genus *Sciurus* and *Tamiasciurus*);
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- California quail and varieties thereof;
- Gambel’s or desert quail;
- mountain quail or varieties thereof;
- blue grouse and varieties thereof;

- ruffed grouse, sage grouse (sage hens), white tailed ptarmigan;
- Hungarian partridges, red-legged partridges, including the chukar and other varieties;
- Ring-necked pheasants and varieties
- Wild turkeys of the order Galliformes