

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203 and 355 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 355, 2055, 3004.5, 3683, and 3950 of said Code, proposes to add sections 311.1 and 507.2, Title 14, California Code of Regulations, relating to methods authorized for taking resident small game and migratory upland game birds within the range of the California condor.

Informative Digest/Policy Statement Overview

Section 311.1

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*);
- 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

Section 507.2

The existing regulations provide for methods to be used to take small game, including rabbits, squirrels; and resident and migratory upland game birds. Traditionally, projectiles containing lead and lead shot have been used. The regulation changes proposed as options would require non-lead projectiles for migratory upland game (common snipe, western mourning doves, white-winged doves and band-tailed pigeons) hunting in the geographic area described in Section 3004.5 of the Fish and Game Code (California Condor range) 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 migratory upland game birds.

The proposed rulemaking is intended to provide the Commission with an option to consider in addition to the recommended "no change" option:

Establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm capable of firing the projectile while taking or attempting to take migratory upland game birds defined in Section 3683 of the Fish and Game Code, [jacksnipe (common snipe), western mourning doves, white-winged doves and band-tailed pigeons], within the area described in 3004.5 of the Fish and Game Code.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, June 25, 2009 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 31, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 3, 2009. All comments must be received no later than August 6, 2009, at the hearing in Woodland, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

Section 311.1: 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.

Section 507.2: The proposed action 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 of lead projectiles, the impact is not expected to be

significant because non-lead projectiles for hunting migratory upland game birds are readily available and currently sold in the same stores.

- (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:

Section 311.1: 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.

Section 507.2: Most ammunition retailers currently offer non-lead (e.g. steel shot) ammunition options because it is required for taking waterfowl. Retailers can be expected to increase their 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:

Section 311.1: 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.

Section 507.2: Department inquiries indicate that there are many manufacturers currently producing non-lead ammunition for taking migratory upland game birds. The price of non-lead ammunition is slightly higher in cost than lead ammunition. Steel shotshells cost 10 – 20% more than lead shotshells.

When viewed as part of the total cost of a hunting trip however, (license, food, fuel, 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:

Sections 311.1 and 507.2: 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:

Sections 311.1 and 507.2: None.

- (f) Programs Mandated on Local Agencies or School Districts:

Sections 311.1 and 507.2: 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:

Sections 311.1 and 507.2: None.

- (h) Effect on Housing Costs:

Sections 311.1 and 507.2: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

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 action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: June 2, 2009

John Carlson, Jr.
Executive Director

