

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 353
Title 14, California Code of Regulations
Re: Methods Authorized for Taking Big Game

- I. Date of Initial Statement of Reasons: December 15, 2008
- II. Date of Pre-adoption Statement of Reasons: March 20, 2009
- III. Date of Final Statement of Reasons: April 22, 2009
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 5, 2009
Location: Sacramento
 - (b) Discussion Hearing Date: March 4, 2009
Location: Woodland
 - (c) Discussion Hearing Date: April 9, 2009
Location: Lodi
 - (d) Adoption Hearing: Date: April 21, 2009
Location: Teleconference
- V. Update:

At their March 5, 2009 meeting the Commission requested an additional alternative to allowing all hunters to use a 1X scope while hunting under a muzzleloading rifle only deer tag. The original proposed regulatory language was modified to include a process similar to that established for disabled archer permits in 2005. Hunters receiving a permit through this process would be allowed to use scopes on their rifles while hunting under the provisions of muzzleloading rifle only tags.

At their teleconference meeting on April 21, 2009 the Commission requested the proposed regulatory language for Option #2 (Disabled Muzzleloader Scope

Permit) be modified to reflect that the Disabled Muzzleloader Scope Permit only permits the use of a 1X scope when hunting under the provisions of a muzzleloading rifle only deer tag. This option was adopted.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

Comment by Mr. Toby Bridges, email dated March 11, 2009: Opposes the recommendation to allow 1X scopes and recommends removing all scope restrictions (current and proposed) from muzzleloading only rifle hunts.

Department Response: Muzzleloading rifle only hunts are additional hunts which typically occur later in the year after the general seasons have closed. At this time of year, deer are more accessible to hunters (location and behaviorally) and tag quota's are very limited because hunter success is high. Adding modern optics to modern muzzleloading rifles is likely to increase the hunter success to a level where tag quotas to achieve the desired harvest will have to be drastically reduced. The Department's original proposal to allow a 1X scope only should not increase harvest but will allow hunters to focus more easily on their target.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

1. Modify Method of Take Equipment Definitions for Muzzleloading Rifle Hunts

Allow the use of scopes on muzzleloading rifle deer hunts with no restriction of magnification. This alternative was considered and rejected because it would result in an increase in harvest and hunter success by

increasing the effective range of muzzleloading rifles. This would result in tag quota reductions, possible elimination of hunts and unnecessarily reduce hunter opportunity.

2. Possession of a loaded muzzleloading firearm in a vehicle

No other reasonable alternatives were identified.

(b) No change Alternative:

1. Modify Method of Take Equipment Definitions for Muzzleloading Rifle Hunts

The no change alternative was considered and rejected because it would not achieve the objective of the proposed action. This proposal provides for a reasonable accommodation in meeting federal requirements under ADA without any significant effects to the resource.

2. Possession of a loaded muzzleloading firearm in a vehicle

The no change alternative was rejected because the regulation is needed for public safety reasons.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. 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 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 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. The proposed action modifies method of take regulations for existing hunts.

Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

- (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:

None.

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

The agency is not aware of any cost impacts that a representative private person 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:

None.

- (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.

Updated Informative Digest/Policy Statement Overview

OPTION #1 (subsection (f)):

Existing regulations provide equipment restrictions to be used to take deer under the conditions of a muzzleloading rifle or muzzleloading rifle/archery deer tag. Currently, sight devices on muzzleloading rifles are restricted to open or “peep” type sights only. By limiting the sights to open or “peep” type sights, a person’s visual acuity becomes the primary factor in limiting the effective range of both modern (in-line) and traditional (flintlock, wheellock, matchlock and percussion) muzzleloading rifles.

Recent advances in muzzleloading rifles, propellants and projectiles have increased the power of muzzleloading rifles resulting in higher muzzle velocities and increased effective killing range. When combined with modern higher powered riflescopes the effective killing range of muzzleloading rifles has increased substantially, placing them on par with many modern centerfire rifles. Considering the increase in technological advances in the power of muzzleloading rifles and resulting effective downrange velocities, the primary intent of restricting the sight type was to maintain a semblance of “traditional” muzzleloading rifles by restricting their effective shooting distance through control of the sight mechanism.

The Department has received several requests from visually impaired hunters to allow the use of scopes on muzzleloading rifles under the conditions of a muzzleloading rifle or muzzleloading rifle/archery deer hunt tag as a reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA). The primary concern of these entities is that various sight impairments prevent visually impaired hunters from participating in the muzzleloading rifle deer hunts, or preclude them from making accurate shots based on their inability to focus on either, the sights currently authorized, the target object, or both. A scope would provide the visually impaired with the ability to focus the scope, thus providing a clearer sight picture (generally a scope reticle), as well as a more well focused target object.

The Department believes that allowing the use of any riflescopes (especially scopes in excess of one power; 1X magnification) on muzzleloading rifle deer hunts would result in an increase in deer harvest and hunter success. By allowing scopes with unlimited power on muzzleloading rifles, the effective shooting range is substantially increased due to the increased resolution and power provided by the scope’s additional magnification. The increased effective range would ultimately result in higher deer harvest and increased hunter success, thereby requiring a significant reduction in tag quotas, possible elimination of some muzzleloading rifle deer hunts, and a reduction in hunter opportunity.

However, the Department believes that allowing the use of riflescopes not exceeding one power (1X magnification) would be a reasonable alternative. By limiting the scope power to 1 power (1X magnification) or less, the effective range of muzzleloaders would remain unchanged and no significant change in deer harvest or hunter success would occur. A one power (1X) scope would provide the visually impaired with a mechanism that would allow adjustment of the focus on both the sight mechanism (scope reticle) and the target object, thereby providing visual relief and a reasonable accommodation per their request under the ADA.

The proposed regulation change would allow hunters, including those with visual impairments, to use rifle mounted scopes or other similar devices, not exceeding 1 power (1X) in magnification, while hunting deer under the conditions of a muzzleloading rifle or muzzleloading rifle/archery tag. No increase in deer harvest or loss of hunter opportunity would result from this action and the proposal is consistent with existing deer herd management plan recommendations.

OPTION #2 (subsection (k)):

Allow disabled muzzleloading rifle hunters that have, and can provide upon request by law enforcement personnel, written medical documentation attesting to their inability to use conventional muzzleloading rifle equipment to use a muzzleloading rifle with a scope during the muzzleloading rifle only hunts. This will result in creating another application process which the Department will have to implement and monitor, and depending upon the level of increased hunter success, may lead to tag quota reductions, possible elimination of hunts and unnecessarily reduce hunter opportunity. This alternative was included for consideration at the specific request of the Fish and Game Commission (meeting held February 5, 2009 in Sacramento).

Subsection (j)

There are currently no Fish and Game Code laws or California Code of Regulations Title 14 regulations relating to possession of a loaded muzzleloading firearm in a vehicle. There is a Penal Code section relating to the carrying of a loaded firearm in a public place, but this section does not cover some areas of the state where the Penal Code section is not applicable. These areas are commonly frequented by hunters who travel these areas in vehicles. The Fish and Game Code addresses the carrying of both rifles and shotguns in vehicles but does not address muzzleloading firearms. The muzzleloading firearms do not fall under the Fish and Game Code laws as they relate to loaded firearms.

By not having laws or regulations regulating the carrying of loaded muzzleloading firearms in either the Fish and Game Code or the California Code of Regulations, Title 14, wardens in the field cannot enforce safety regulations relating to the carrying of

loaded muzzleloading firearms in vehicles unless the situation falls under the authority of the Penal Code.

The popularity of muzzleloader hunting has increased in recent years due to the increased technology in muzzleloading firearms. Wardens have seen an increase in the public using muzzleloading firearms. Wardens have come across numerous hunters with loaded muzzleloading firearms in vehicles. The only thing a warden can do in these instances is explain the safety ramifications to the hunters. They have no authority to make the person unload the firearm. This is a safety to both the hunter and the warden who is making the contact. With a regulation prohibiting the carrying of a loaded muzzleloading firearm in a vehicle, it will increase the safety for the hunter, public and wardens or others who contact hunters in public places.

At the Commission's request, the original proposed language in the ISOR was modified to include both options. This permit would allow authorized individuals to use a 1X scope while hunting under a muzzleloading rifle only deer tag. This process is essentially the same as established for disabled archer permits in 2005. No other changes to the originally proposed regulatory language were made.

At their teleconference meeting on April 21, 2009 the Commission requested the proposed regulatory language for Option #2 (Disabled Muzzleloader Scope permit process) be modified to reflect that the Disabled Muzzleloader Scope Permit allows the use of a 1X scope only when hunting under the provisions of a muzzleloading rifle only deer tag. Pursuant to that change, this option and the proposal to add a definition of a loaded muzzleloader in a vehicle, was adopted.

Minor editorial changes were made to simplify the combination of both Option #1 and Option #2.