

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 (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, Section 311, 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*);

In addition, at their April 9, 2009 meeting, the Commission requested the Department to provide an option that would require non-lead projectiles for taking all upland game, including migratory upland game birds. This Initial Statement of Reasons is intended to broaden the consideration of the settlement agreement to provide the Commission with the option 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 migratory upland game birds, specifically jacksnipe (common snipe), western mourning doves, white-winged doves and band-tailed pigeons.

In addition to the recommended "no change" in regulation, the option to be considered is:

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.

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

Authority: Section 355, Fish and Game Code.

Reference: Sections 355, 2055, 3004.5 and 3683, 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 migratory upland game 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 mammals and upland game birds, 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 Proposed Project

There were no other alternatives to the options provided.

- (b) No Change Alternative:

A reasonable alternative is not to add a regulation to modify the method of taking migratory upland game birds within the range of the California Condor. This Initial Statement of Reasons was prepared to provide the Commission with the option to include migratory upland game birds.

The “no change” alternative would maintain the possible, however highly unlikely, risk of indirect lead poisoning to the California condor from legal migratory upland game bird 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 migratory upland game birds with lead ammunition poses a risk to California condors because of the unlikely event that a migratory upland game bird 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 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:

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:

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:

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

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, Government Code:

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 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.