

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 601 and Subsection 702(a)(1)
Title 14, California Code of Regulations

Re: Enhancement and Management of Fish and Wildlife
and their Habitat on Private Lands and
Hunting Applications, Tags, Seals, Permits, Reservations and Fees

I. Date of Initial Statement of Reasons: July 3, 2013

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: October 2, 2013
 Location: Ventura, CA

(b) Discussion Hearing: Date: November 6, 2013
 Location: La Quinta, CA

(c) Adoption: Date: December 11, 2013
 Location: San Diego, CA

III. Description of Regulatory Action:

Current regulations in Section 601, Title 14, California Code of Regulations (CCR) describe the procedures required for the operation of the Private Lands Wildlife Habitat Enhancement and Management Area (PLM) Program. The PLM program began as a "pilot program" in 1979 with 5 areas encompassing less than 300,000 acres over 5 counties. Following the success of the pilot program, a more far-reaching program was enacted in 1984. In that year, the PLM program consisted of 8 areas in 7 different counties totaling 310,000 acres. In 2013, there are 103 areas spread throughout the Department's six terrestrial regions, encompassing approximately 1,047,000 acres. Revenue from the sale of PLM tags and seals allows licensees to conduct habitat improvement projects on their property and provides an economic incentive to maintain wildlife habitat on private lands.

Current regulations in Section 702(a)(1), Title 14, California Code of Regulations (CCR) list the three license application forms required to apply for and maintain enrollment in the PLM Program. Proposed changes to Section 601 would require regulation changes to Section 702 (a)(1).

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

1. Modify the tag and seal process to clarify hunter and licensee responsibilities for reporting harvest information and clarify use of Private Land Management (PLM) vouchers.

Existing regulations require hunters to fill out their PLM tag. Modifications are proposed to Section (c)(1) requiring the licensee to fill out the PLM tag with the hunter's information before distributing the tag to the hunter. This will reduce the number of incomplete tags returned to the Department.

Existing regulations also require the hunter, if successful, to get their tag validated and returned to the licensee before leaving the property. This is not possible on many properties as not all have a PLM representative on-site to validate and collect tags before the hunter leaves the property. The way the regulations are currently worded, a hunter could be cited for leaving the property prior to having their tags validated. Section (c)(2)(C) is modified to require hunters to report their harvest information to the licensee within 5 days of their hunt and require them to mail their filled tag to the Wildlife Branch located at 1812 Ninth Street, Sacramento, CA 95814. Reporting harvest within this time frame will not affect the management or enforcement of this regulation and is expected to improve total reporting.

Current regulations allow licensees to pay for issued tags and seals before March 1 or incur a 10% late fee. This creates an extra workload for the Department due to phone calls and mailings to make sure all payments are received before March 1. Subsection (d)(2) is proposed to be modified to require tags and seals to be paid in full before they are released to the licensee.

Existing regulations require hunters to exchange a deer tag application or an unfilled deer tag for a PLM deer tag. The Department no longer uses paper deer tag applications. The License and Revenue Branch has created a PLM voucher for hunters to purchase and exchange for PLM tags. Tag applications are replaced with PLM vouchers in subsection (c)(2)(B) to allow the use of the newly implemented Automated License Data System (ALDS).

2. Modify the annual licensing and reporting process, clarify reporting requirements, change the due date for the annual report and modify the number of property inspections per five year license agreement for each PLM.

Existing regulations require licensees to sign an application annually. This is redundant paper work for the landowner, Department and the Commission. Each Initial/5-Year Application and subsequent approval by the Commission licenses the PLM for 5 years. Modifying the language in subsection (a) will reduce the workload on Department and Commission staff by eliminating the requirement for annual applications.

Existing regulations require an annual application, report and property

inspection for each property. The intent of the language was to closely monitor each property during the initial years of the program. The program has been a success over the last 32 years and currently has 103 properties consisting of approximately 1 million acres enrolled. The proposed changes will decrease the workload on department staff and licensees. In Section (b)(6) the requirement for an Annual Application is recommended for deletion. Contents of the Annual Report are clarified and the due date is changed from March 1 to February 1 to allow regional staff more time to review reports. Proposed modifications to Section (b)(6)(A-C) change the requirement for an annual property inspection. After a property has completed its initial five years in the program, property inspections shall be conducted a minimum of two times for each five year period. Proposed modifications to Sections (b)(5) and (c)(2)(A) clarify that the terms and conditions in the license are consistent with existing laws and regulations.

3. Modify language to allow antelope and elk hunting during the initial year in the program and remove unnecessary text to improve consistency and clarity for elk, deer and antelope hunting.

Existing regulations do not allow elk and antelope hunting during a licensee's initial year in the program. When the PLM Program was created in 1981 the program was very controversial. The Department required that properties complete their habitat work during the initial year in the program before elk or antelope hunting would be allowed. Landowners needed to prove they would do the habitat work before the Department would release elk or antelope tags, in effect making licensees pay for five years of habitat work for four years of hunting. With the experience of a 32-year successful program, the Department has not had significant non-compliance issues and has routinely recommended new licensees be granted an exception that allows for elk and antelope hunting in the first year as provided for in Section (b)(5)(A). The proposed change to subsection (b)(5)(A) is intended to create consistency for elk, antelope and deer hunting during the initial year. The addition of antelope to subsection (b)(5)(A) allowed the removal of subsection (c)(2)(C) which was confusing and outdated.

4. Add language expressly providing access to Department law enforcement personnel.

The existing regulation does not expressly allow Department law enforcement personnel access to properties enrolled in the PLM Program. The proposed addition of subsection (d)(3) will allow wardens to make unannounced property visits anytime during each PLM's hunt season to ensure compliance with CDFW's regulations.

Access to private lands by wildlife officers for the purpose of enforcing state game laws has long been upheld by the courts [*Betchart v. Department of Fish and Game* (1984) 158 Cal.App.3d 1104; *Oliver v. United States* (1984) 466 U.S. 170, 177, 178; *United States v. Dunn* (1987) 480 U.S. 294, 303] under the "Open Fields" doctrine. Many properties enrolled in the

PLM Program consist of large acreages that cannot reasonably be patrolled without vehicle access. The proposed language requiring licensees to provide access to wildlife officers is necessary to allow routine patrols during the hunting season to deter poaching or trespass by unauthorized hunters and to ensure that any take of wildlife on the property is consistent with the terms of the PLM license.

5. Combine two of the existing PLM application forms, delete the annual application, and update subsection 702(a)(1) to reflect these changes.

Proposed changes to subsection 601(a) remove the requirement for the annual application, FG WPB 539 (Rev. 01/11). To streamline the application forms, we combined the Initial Application, FG WPB 538 (Rev. 01/11) and the 5- year Renewal Application, FG WPB 537 (Rev. 01/11) into one form. The new form, DFW 537 (Rev. 09/13), is also writable so the public can fill it out online.

Current regulations in subsection 702(a)(1) list three license application forms required to apply for and maintain enrollment in the PLM Program. The new Initial and 5-year Application, DFW 537 (Rev. 09/13) will replace the three existing forms listed in subsection 702(a)(1) to reflect the changes made in Section 601.

6. Editorial changes to improve the clarity and consistency of the regulations.

This proposed amendment includes minor editorial changes to correct errors, improve clarity, and reduce redundancy. Specifically subsection 601(a) is modified to clarify the acronym of the program (PLM) and the title “licensee” which is used to describe the landowner or their designee throughout the regulations. Subsection 601(b)(4)(D) is modified to remove Fish and Game Code language concerning licenses.

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

Authority: Sections 200, 202, 203, 713, 3402, 3404, and 3406, Fish and Game Code.

Reference: Sections 3400, 3401, 3402, 3403, 3404, 3406, 3407, 3408, 3409, 4331, 4332 and 4341, Fish and Game Code; *Betchart v. Department of Fish and Game* (1984) 158 Cal.App.3d 1104; *Oliver v. United States* (1984) 466 U.S. 170, 177, 178; *United States v. Dunn* (1987) 480 U.S. 294, 303.

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

None.

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

[Economic Impact Analysis](#)

[Betchart v. Department of Fish and Game \(1984\) 158 Cal.App.3d 1104](#)

[Oliver v. United States \(1984\) 466 U.S. 170, 177, 178](#)

[United States v. Dunn \(1987\) 480 U.S. 294, 303](#)

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

A written comment period was available from January 28th to March 8th, 2013. No written comments were received. Two stakeholder meetings were conducted by CDFW, the first in Redding on February 26, 2013 (12 stakeholders attended) and the second in Paso Robles on March 6, 2013 (10 stakeholders attended). Although the meetings generated much discussion, no comments about the proposed regulatory changes were made.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Alternative 1: Implement all proposed amendments except the payment change. This would allow PLM operators to pay for tags by March 1st of each year instead of prior to receiving their tags.

This alternative was considered but rejected. Allowing PLM operators to pay in arrears results in a financial risk to the Department and creates an unnecessary workload. Department personnel must compile and correlate documents to determine who has not paid and then coordinate with regional staff to collect the fees.

Alternative 2: Implement all proposed amendments, except changes to the procedures for issuing elk and antelope tags.

This alternative was considered but rejected. Maintaining the regulatory section pertaining to issuance of elk and antelope tags would continue to result in confusion for licensees/hunters and is an unnecessary restriction at this stage of the program's existence.

(b) No Change Alternative:

The no change alternative would result in the program continuing to be implemented under current regulations with continued confusion regarding deadlines and reporting requirements. The program would not be consistent with current ALDS operation.

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

in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative 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 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 because the proposed regulatory change will not apply to businesses directly or indirectly. The amendments are administrative improvements to licensing procedures that will not reduce the number of visits to areas surrounding private lands participating in the PLM program. Licensee and hunter spending on gas, food, sporting equipment and other area businesses are not anticipated to change.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

Because the proposed regulatory change makes only technical, administrative changes to the current regulations, it is not anticipated to impact visits or spending in the areas surrounding private lands. Since the number of visitors and the volume of spending are not anticipated to change, direct or indirect impacts on job creation or elimination; business creation, elimination or expansion are not expected.

Significant direct benefits to the health and welfare of California residents are not anticipated, although improved wildlife habitat and sustainable wildlife populations contribute to the general health and welfare of the public.

Benefits to worker safety from the proposed regulation are not anticipated because the proposed regulation will not affect worker conditions.

The Private Lands Management Program (PLM) overall provides substantial environmental benefits by creating landowner incentives to improve habitat for wildlife on approximately 1 million acres of private lands in California.

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

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

The proposed regulations are expected to improve administrative procedures by eliminating unnecessary annual applications and approvals for PLMs. It is expected that these changes will improve program efficiency and allow existing staff to spend more time reviewing reports and inspecting habitat improvements on existing PLMs. Therefore, there will be no fiscal impact (cost or savings) to State Agencies and Federal Funding to the State.

(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

Current regulations in Section 601, Title 14, California Code of Regulations (CCR) describe the procedures required for the operation of the Private Lands Wildlife Habitat Enhancement and Management Area (PLM) Program. Current regulations specify tag reporting and payment requirements, initial year hunting restrictions, due dates, and annual reporting procedures.

Current regulations require licensees to sign an application annually. This is redundant paperwork for the landowner, Department and the Commission. Each Initial/5-Year Application and subsequent approval by the Commission licenses the PLM for 5 years. Modifying the language in subsection 601(b)(6) will reduce the workload on Department and Commission staff by removing the requirement for the annual application. Current regulations in subsection 702(a)(1) specify application forms for PLMs. These forms are consolidated and revised to reflect the propose amendments to Section 601.

The proposed regulatory changes will establish new tag reporting requirements, due dates, and replace tag applications with PLM vouchers. In addition, the proposed changes would allow elk and antelope hunting during the first year of enrollment in the PLM Program. Modifying tag reporting requirements will allow the PLM tag holder flexibility in validating and reporting the PLM tag. Replacing PLM tag applications with vouchers allows the use of the Automated License Data System (ALDS). Adding language to allow wardens to make unannounced property visits will deter poaching or trespass by unauthorized hunters and ensure compliance with existing laws and regulations. The proposed change to allow elk and antelope hunting the initial year of enrollment is intended to create consistency for all big game hunting.

Editorial changes are also proposed to improve the clarity and consistency of the regulations.

Benefits of the Regulations

The proposed changes to Section 601 will improve implementation of the PLM Program, increase flexibility for hunters to validate PLM tags and report their harvest, reduce workload for both Department staff and landowners, and improve compatibility with the Department's Automated License Data System. Overall, the PLM Program benefits the environment by providing incentives for landowners to improve wildlife habitat on approximately 1million acres of private lands.

Non-monetary benefits to the public

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity or the increase in openness and transparency in business and government.

Evaluation of incompatibility with existing regulations

The proposed regulations in this rulemaking action are neither inconsistent nor incompatible with existing State regulations. A key word search in the California Code of Regulations resulted in no other State agency having the authority to promulgate Private Land Management Regulations. There are no comparable federal regulations.