

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

Amend Sections 300, 311 and 745.5
Title 14, California Code of Regulations

Re: Upland Game Birds; Methods Authorized for Taking Resident Small Game;
Revocation or Suspension of Hunting or Sport Fishing Privileges.

I. Date of Initial Statement of Reasons: March 11, 2016

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: April 14, 2016
Location: Santa Rosa, CA

(b) Discussion Hearing: Date: June 23, 2016
Location: Bakersfield, CA

(c) Adoption Hearing: Date: August 25, 2016
Location: Folsom, CA

III. Description of Regulatory Action:

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

Amend Section 300, Upland Game Birds. This section provides definitions, hunting zone descriptions, season opening and closing dates, and daily bag and possession limits for resident and migratory upland game birds. The Fish and Game Commission (Commission) annually considers the recommendations of the Department of Fish and Wildlife (Department) establishing the hunting quotas for the upcoming season in accordance with Fish and Game Code (FGC) Sections 203 and 203.1. There are a limited number of permits issued for sage grouse; that number is determined annually.

Concerns about the potential effects of hunting on sage grouse through additive mortality have been expressed in the scientific literature, including studies from California. The Department responded to these concerns by reducing recommended permit numbers substantially since 2007. The permit system used in California is considered one of the most conservative and best-controlled hunts in sage grouse range.

In 2010, the United States Fish and Wildlife Service (USFWS) determined that Greater sage grouse were “warranted, but precluded” for protection under the Endangered Species Act (ESA) both statewide and as a Distinct Population Segment (DPS) in Mono County. In 2015, the USFWS determined that sage grouse did not need to be listed under ESA largely because of conservation plans and federal land use amendments that reduced the threats to the species.

In 2012, the Commission took emergency action because of the Rush Fire, which encompassed more than 272,000 acres almost entirely within the East Lassen Zone, by reducing the number of sage grouse permits for both Lassen zones to zero. Because of substantial breeding population declines in spring 2013 following the fire, the Department did not recommend issuing any hunting permits in 2013.

The Commission, acting on the recommendation of the Department, adopted the same permit numbers for the 2014-15 and 2015-16 sage grouse seasons:

East Lassen:	0 (2-bird) permits
Central Lassen:	0 (2-bird) permits
North Mono:	30 (1-bird) permits
South Mono:	0 (1-bird) permits

For the 2016-2017 season, the Department will present the Commission a recommendation for permits based on the spring 2016 lek counts. A lek is a communal area in which two or more male sage grouse perform courtship displays to mate with females. Male sage grouse reliably attend these leks throughout the breeding season. The Department performs multiple counts of all known leks in California, including leks both within hunt zones and in non-hunted areas. These lek counts are used to estimate population size and a population model expands the count of males to predict the size of the fall population.

The Department will use these data to determine the number of sage grouse hunting permits to be recommended for 2016. The regulation as set forth in this ISOR proposes a range from which the final numbers of sage grouse permits will be determined:

- [0-50] permits for both Lassen zones (these are two-bird permits),
- [0-100] permits for both Mono zones (these are one-bird permits).

A range, instead of a specific permit number, is necessary at this time because the final number of permits cannot be determined until the Department conducts spring lek counts in April.

Amend subsection 300(a)(1)(F)(3). Delete the current white-tailed ptarmigan hunting zone description and add a new statewide area.

Ptarmigan are an introduced, non-native species, which are now known to occur outside of the existing hunt zone. Changing the zone description is necessary because there is no need to restrict their harvest and the expanded area increases the hunting opportunity of this non-native species. The proposed regulation change would allow ptarmigan to be taken anywhere they occur in accordance with existing authorized season, bag limit, and possession limit.

Amend subsection 311(e), Methods Authorized for Taking Resident Small Game. This section identifies the methods of take for all resident small game species including by bow and arrow, and crossbow. Some types of arrows or bolts are not as effective on larger upland game birds such as wild turkeys, and may result in wounding that does not quickly dispatch the birds. The proposed amendment to subsection 311(e)(1) would require the use of broad head type blades that will not pass through a hole seventh-eighths inch in diameter on hunting arrows or crossbow bolts for the taking of wild turkey, similar to big game as required in Section 354(c). Broad head arrows are necessary for a more lethal method of take for larger animals and the proposed regulation is expected to reduce wounding loss in wild turkeys.

Amend subsection 311(k). In response to a petition submitted to the Commission by the National Rifle Association and the California Rifle and Pistol Association, the Department proposes an exception to subsection 311(k) to accommodate archery upland game bird hunters who are either active or honorably retired peace officers, or hunters that possess a Concealed Carry Weapon (CCW) permit, who want to legally carry a firearm with them for personal protection while archery hunting. With this change, the Department also proposes to add the words 'use or' to clarify that while in possession of a legal firearm, it may not be used during archery only hunting. The Department acknowledges that active or retired peace officers, and individuals who have been issued CCW permits, have been vetted by a Sheriff, Police Chief, or other law enforcement agency. In addition, the Penal Code requires CCW applicants to complete a course in firearms training, be of good moral character, and demonstrate that good cause exists for issuance of the permit.

Amend subsections 745.5(b) and (c), Revocation or Suspension of Hunting or Sport Fishing Privileges. In order for the Department to support the proposed amendment to subsection 311(k) allowing peace officers or holders of CCW permits to possess firearms while hunting during archery-only seasons, the Department needs the authority to revoke or suspend their hunting or sport fishing privileges for violation of subsection 311 as amended.

PROPOSED REGULATIONS:

1. Amend subsection 300(a)(1)(D)4.: Adjust the annual number of General Season sage grouse hunting permits by zone for the 2016-17 season.

The numbers of permits ultimately recommended for each hunt zone will be based on the following criteria:

- a. Size and trend of the spring breeding population in each hunt zone based on lek counts conducted in March and April.
- b. The allowable harvest level will not exceed 5% of the predicted fall population.
- c. If the allowable harvest in any zone provides for a minimum number of permits to be recommended in any zone of 5 permits or less, no permits will be recommended for that zone.

2. Amend subsection 300(a)(1)(F)3.: This proposal deletes the current white-tailed ptarmigan hunting zone description and adds a new statewide area allowing ptarmigan to be taken anywhere they are found in California in accordance with the authorized season, bag limit, and possession limit.

3. Amend subsection 311(e) by adding a new subsection (1): Require the use of broad head blades on hunting arrows and crossbow bolts for the take of wild turkey.

4. Amend subsection 311(k) and add a new subsection (1): Authorize current or honorably retired peace officers and hunters who possess a CCW permit to possess a firearm while hunting upland game birds during archery only seasons for personal protection. The use of any firearm during archery season remains prohibited.

5. Amend Section 745.5 by adding a new subsection (b): Authorize the Department to suspend or revoke the hunting or sport fishing license or privileges for a violation of Section 311.

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

Section 300:

Authority cited: Sections 200, 202, 203 and 355, Fish and Game Code.

Reference: Sections 200, 202, 203, 203.1, 215, 220, 355 and 356, Fish and Game Code.

Section 311:

Authority cited: Sections 200, 202 and 203, Fish and Game Code.
Reference: Sections 200, 203 and 3004.5, Fish and Game Code.

Section 745.5:

Authority cited: Section 12155.5, Fish and Game Code.
Reference: Sections 4340, 4754, 12154, 12155, 12155.5 and 12156, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.
- (d) Identification of Reports or Documents Supporting Regulation Change: None.
- (e) Public Discussions of Proposed Regulations Prior to Notice publication:
Fish and Game Commission's Wildlife Resource Committee meeting held in Fresno, CA on September 9, 2015.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No Alternatives were identified.

- (b) No Change Alternative:

Without a regulation change to subsection 300(a)(1)(D)4:

Sage grouse permit numbers would not change from 2015 and permits for 2016 would not be calculated based on current year data.

Without a regulation change to subsection 300(a)(1)(F):

The hunting zone for ptarmigan would be limited to the current description in regulation, not statewide and result in fewer opportunities to hunt this non-native species.

Without a regulation change to Section 311(e):

Any hunting arrows and crossbow bolts would continue to be allowed for the take of wild turkey, some of which are not as effective and result in wounding that does not quickly dispatch the animal.

Without a regulation change to Section 311(k):

Possession of a firearm by any person during an archery season will remain a violation.

Without a regulation change to Section 745.5:

The regulation would not be clear that (with the change to 311(k)) a person legally authorized to carry a firearm in accordance with the statutory provisions for peace officers and holders of concealed carry permits may not use the firearm for the purpose of taking an animal during archery season.

(c) Alternatives considered but rejected:

The National Rifle Association and the California Rifle and Pistol Association petitioned the Commission to consider the following two alternatives in Section 311:

(1) Delete from subsection 311(b) the prohibition of possession of shells with shot larger than size BB; and, delete the prohibition of possession of shells with shot larger than No. 2 while pursuing turkey.

Rejected. The Department opposes this request due to safety and enforceability concerns. The majority of hunter casualties occur while upland/small game hunting. Hunters are in much closer proximity to one another while engaged in this kind of hunting, resulting in increased accident risk. An accident involving an errant shotshell loaded for big game hunting is far more lethal than shells containing smaller shot sizes. In addition, wildlife officers commonly see evidence of poachers intentionally and unlawfully using larger shot or slugs to take waterfowl and larger game birds such as turkey because they are effective at much greater distances than currently authorized shot. The existing prohibition facilitates effective law enforcement and does not preclude lawful hunting, but rather requires hunters to choose among lawful options.

(2) Delete subsection 311(k), which prohibits possession of firearms by archers hunting during an archery season, in its entirety;

Rejected. Deleting subsection 311(k) would permit a hunter to possess a firearm during archery-only season. Archery-only seasons are specifically authorized to provide an archery hunter additional opportunity to hunt outside the normal firearms hunting season. Hunters who take advantage of archery-only seasons do so voluntarily with the full understanding that they will not be able to possess a firearm. It is an informed choice. Authorizing archery hunters to possess firearms while hunting during archery seasons would hamper effective enforcement and increase the probability that firearms will be illegally used as a method of take, which directly contradicts the intent of the archery-only hunting privilege.

(d) 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 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 regulations propose only minor changes not affecting 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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment.

The Commission does not anticipate any impacts on the creation or elimination of jobs or businesses in California or on the expansion of businesses in California; and, does not anticipate benefits to worker safety, because the regulations propose only minor changes not affecting jobs.

The Commission anticipates benefits to the health and welfare of California residents. The proposed regulations are intended to provide continued recreational opportunity to the public. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources.

The Commission anticipates benefits to the environment by the sustainable management of California's upland game resources. The fees that hunters pay for licenses and stamps are used for conservation.

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

The Commission 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: 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, Government Code: None.
- (h) Effect on Housing Costs: None.

VII. Economic Impact Assessment:

The following amendments to the regulations are proposed:

1. Amend subsection 300(a)(1)(D)4.: Adjust the annual number of General Season sage grouse hunting permits by zone for the 2016-17 season.
2. Amend subsection 300(a)(1)(F)3.: This proposal deletes the current white-tailed ptarmigan hunting zone description and adds a new statewide area allowing ptarmigan to be taken anywhere they are found in California in accordance with the authorized season, bag limit, and possession limit.
3. Amend subsection 311(e) by adding a new subsection (1): Require the use of broad head blades on hunting arrows and crossbow bolts for the take of wild turkey.
4. Amend subsection 311(k) and add a new subsection (1): Authorize current or honorably retired peace officers and hunters who possess a CCW permit to possess a firearm while hunting upland game birds during archery only seasons for personal protection. The use of any firearm during archery season remains prohibited.
5. Amend Section 745.5 by adding a new subsection (b): Authorize the Department to suspend or revoke the hunting or sport fishing license or privileges for a violation of Section 311.

Effects of the regulations on the creation or elimination of jobs within the state.

The proposed regulations will not affect the creation or elimination of jobs because they will not impact business conditions since there are no changes in fees, addition of fees, or addition of costs to businesses or persons. Generally, positive impacts to jobs and/or businesses that provide services to hunters are anticipated with the adoption of the proposed hunting regulations for the 2016-17

season. This is based on the 2011 U.S. Fish and Wildlife National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California (revised Feb. 2014). The report estimates that small game hunters contributed about \$142,412,000 to small businesses in California during the 2011 small game hunting season. Additionally, the long-term intent of the proposed regulations is to sustainably manage upland game bird populations, and consequently, the long-term viability of these same small businesses. The 2011 report is posted on the US Dept. of Commerce website at http://www.census.gov/prod/013pubs/fhw11_ca.pdf.

Effects of the regulations on the creation of new businesses or the elimination of existing businesses within the state.

The result of the regulations on the creation of new businesses or the elimination of existing businesses within the state will be neutral. Minor variations in the season, bag limits, methods of take, and shooting hours as may be established in the regulations are, by themselves, unlikely to stimulate the creation of new businesses or cause the elimination of existing businesses. The number of hunting trips and the economic contributions from them are expected to remain more or less the same.

Effects of the regulations on the expansion of businesses currently doing business within the state.

The long-term intent of the proposed regulations is to sustainably manage upland game bird populations, and consequently, the long-term viability of small businesses that serve recreational upland game bird hunters.

Benefits of the regulations to the health and welfare of California residents.

Hunting is an outdoor activity that can provide several benefits for those who partake in it and for the environment as well. The fees that hunters pay for licenses and stamps are used for conservation. In addition, the efforts of hunters can help to reduce wildlife depredation on private lands. Hunters and their families benefit from fresh game to eat, and from the benefits of outdoor recreation. People who hunt have a special connection with the outdoors and an awareness of the relationships between wildlife, habitat, and humans. With that awareness comes an understanding of the role humans play in being caretakers of the environment. Hunting is a tradition that is often passed on from one generation to the next creating a special bond between family members and friends.

Benefits of the regulations to worker safety.

The regulations will not affect worker safety because they do not address working conditions.

Benefits of the regulations to the state's environment.

It is the policy of this state to encourage the conservation, maintenance, and utilization of upland game bird resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of upland game birds to ensure their continued existence and the maintenance of a sufficient resource to support recreational opportunity. Adoption of scientifically-based upland game bird seasons, bag and possession limits provides for the maintenance of sufficient populations of game birds to ensure those objectives are met.

Concurrence with other Statutory Requirements.

Not applicable

Informative Digest/Policy Statement Overview

The regulations in Section 300, Title 14, California Code of Regulations (CCR), provide general hunting seasons for taking resident and migratory upland game birds. Section 311 identifies the authorized methods of take for all resident small game species. Section 745.5 sets forth the procedures for the suspension or revocation of a person's hunting or sport fishing license or permit privileges. The Department is recommending the following regulation changes:

1. Amend subsection 300(a)(1)(D)4.: Adjusts the annual number of General Season sage grouse hunting permits by zone for the 2016-17 season.
2. Amend subsection 300(a)(1)(F): Deletes the current white-tailed ptarmigan hunting zone description and adds a new statewide area allowing ptarmigan to be taken anywhere they are found in California in accordance with the authorized season, bag limit, and possession limit.
3. Amend Section 311(e) by adding a new subsection (1): Requires the use of broad head blades which will not pass through a hole seven-eighths inch in diameter on hunting arrows and crossbow bolts for the take of wild turkey.
4. Amend Section 311(k) and add a new subsection (1): Authorizes possession of a firearm during archery-only seasons by hunters authorized to carry concealable firearms via a CCW permit or peace officer endorsement. Use of a firearm to hunt during archery only seasons is a violation.
5. Amend subsections 745.5(b) and (c). Authorizes revocation or suspension of hunting or sport fishing privileges by the Department for violation of Section 311 as amended.

Benefits of the Proposed Regulations

Adoption of sustainable upland game seasons, bag and possession limits, and authorized methods of take provides for the maintenance of sufficient populations of upland game birds to ensure their continued existence.

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 and the increase in openness and transparency in business and government.

Evaluation of incompatibility with existing regulations

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to section 300, 311, and 74.5.5 are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate hunting regulations.