

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

Amend Section 670
Title 14, California Code of Regulations
Re: Falconry

- I. Date of Initial Statement of Reasons: July 26, 2016
- II. Date of the Amended Initial Statement of Reasons: November 9, 2016
- III. Date of Final Statement of Reasons: February 17, 2017
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: August 25, 2016
Location: Folsom, CA
 - (b) Discussion Hearing: Date: October 20, 2016
Location: Eureka, CA
 - (c) Adoption Hearing: Date: December 8, 2016
Location: San Diego, CA
- V. Update:

The Commission adopted the regulation on December 8, 2016, as set forth in the Amended Initial Statement of Reasons, amending Section 670, Title 14, California Code of Regulations (CCR), establishing falconry regulations in conformance with federal requirements.

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

See attached Appendix of Comments and Responses.
- 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 Wildlife
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified.

(b) No Change Alternative:

The falconry regulations were last amended in 2013 to conform to federal guidelines which required states to adopt their own rules governing the sport. At that time it was understood by the Commission, falconers, and the public that the new California regulations would need updating and amending. The “No Change” alternative would not update the regulations and would not meet this expectation.

(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 affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 Commission does not anticipate significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations amend the existing rules for the sport of falconry, primarily for recreational purposes.

(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 significant impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses. The proposed regulations are not anticipated to directly affect the health and welfare of California residents. The proposed regulations are in accord with the broad aims of resource management but the cumulative effects are anticipated to be neutral to the environment. The proposed regulations affect a limited number of falconers in California (there are approximately 615 licensed falconers in California) and therefore are unlikely to impact the creation or elimination of jobs, or the expansion or elimination of existing businesses, the health and welfare of California residents, or the State's environment.

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

The proposed amendments do not impose any additional fees or costs to private persons involved in the sport of falconry.

(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.

UPDATED Informative Digest/Policy Statement Overview

Amend Sections 670, Falconry, Title 14, California Code of Regulations (CCR).

The falconry regulations were last amended in 2013 to conform to federal guidelines which required states to adopt their own rules governing the sport. At that time it was understood by the Commission, falconers, and the public that the new California regulations would require updating and amendment to bring the regulations more in line with the current practice of falconry in California.

Numerous minor edits, renumbering, and clarifying changes are proposed; the more substantive changes include:

- Revising language to be more consistent with regulatory language standards (e.g., using lower-case for all headers, renumbering subsections, appropriate references for websites, replacing “regulatory year” with “license year,” reference to expired licenses, references to federal regulations).
- Allowing falconers to complete reports using the Department’s online reporting system found on the Department website at wildlife.ca.gov. Accordingly, no reporting to the USFWS is required and all references to the federal form 3-186A are removed.
- Clarifying what documentation is required to be carried when engaged in falconry activities.
- Amending the definitions (e.g., falconry, hacking, imping) to more accurately represent the activity.
- Improving instructions to falconers for procedures to avoid take of unauthorized wildlife and instructions to follow in the event that inadvertent take does occur, including fully protected species, and adopting “let it lay” language for non-protected species (meaning that if take occurs to let the raptor feed on the prey) and reporting requirements.
- Clarifying that a falconry license does not authorize the take of threatened or endangered species, candidate species, or fully protected species.
- Clarifying licensee application procedures for resident, nonresident, tribal, and non-US citizen falconers.
- Adding language specifying that a tribal member with a valid falconry license issued from that member’s tribe will be treated in the same manner as a nonresident licensed falconer.
- Clarifying that a tribal member that does not have a license must apply for a California license to practice falconry outside the jurisdiction of the tribe.
- Clarifying that the exam fee is charged for each multiple examination to recover the Department’s reasonable costs.
- Adding an exam exemption for new resident falconers with a valid out-of-state falconry license.
- Clarifying when inspections are needed.
- Clarifying what is allowed and not allowed under an expired license, and what steps must be taken if a licensee wishes to continue to practice falconry.

- Revising suspension and revocation clause to be more specific to the types of violations that would result in immediate action.
- Regarding written authorization required for certain activities, adding specifications that the authorization must be signed and dated with original signature.
- Identifying License and Revenue Branch as the point of contact for certain determinations, with the actual determination being made by Wildlife Branch in some instances.
- Clarifying the necessity of maintaining a continuous sponsorship of an apprentice; what period of time will be counted toward a total of 2 years sponsorship; and sponsor responsibility to assure that minimum qualifications have been met.
- Clarifying that falconers must maintain proper documentation of legal acquisition of birds and records retention is for 5 years only.
- Clarifying that take of northern goshawk outside of the Tahoe Basin does not have a limit.
- Adding language that identifies no need for a new inspection if the facilities shared by multiple falconers have passed a previous inspection.
- Clarifying when the administrative fee applies.
- Revising specifications for applying for the raptor capture drawing and obtaining a permit, including revision of deadline dates and times.
- Allowing falconers to remove bands or reband raptors under certain circumstances, if needed.
- Adding specific language allowing family members to watch raptors outside, but only if a specific age.
- Deleting the existing provision in 670 that raptors may be permanently transferred to a falconer from rehabilitation facilities. Section 679 provides for the permanent disposition from rehabilitation facilities of wildlife including birds.
- Clarifying that falconers may temporarily possess raptors from rehabilitation facilities for the purpose of conditioning for release back in to the wild.
- Adding text to clarify that non-native raptors or barred owls may not be released into the wild.
- Revising text regarding process and limitations for mounting raptor carcasses.
- Clarifying that unannounced inspections are applicable to falconry facilities.
- Revising language so that the Department will make a reasonable attempt to contact the licensee prior to conducting inspections.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the practice of falconry. No other State agency has the authority to promulgate such regulations. The Commission has searched the CCR for any regulations regarding falconry and has found no such regulation; therefore the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

BENEFITS OF THE PROPOSED ACTION:

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of resource related recreational activities that serve in harmony with federal law respecting conservation of the living resources under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the management and maintenance of captive raptor populations to ensure their continued existence of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based regulations provides for the health and maintenance of sufficient populations raptors. The Commission additionally anticipates benefits to the captive breeding program as well as the management of the rehabilitation of raptors as needed. The proposed regulation changes are intended to provide increased health and maintenance to the State's falconry program from its recent transition for federal to states oversight. The Commission anticipates benefits to the environment by the sustainable management of California's resources.

The amended ISOR adds statements of necessity to Section III (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary; other clarifying statements; and, minor editorial changes. These statements are entirely related to, and do not alter, the proposed regulatory text in Section 670.

In response to comments from the California Hawking Club, the Department, and other falconers, the Commission made revisions to the proposed regulatory text in two areas. Subsection 670(a) was revised to reduce the number of documents required to be carried by falconers when hunting. Falconers will be required only to have in their immediate possession a valid original falconry license, a valid original hunting license, and any required stamps, the same as required for any other hunter. Subsection 670(a)(4), which initially specified additional documents related to falconry, has been deleted.

Subsection 670(j)(3)(A) has also been revised to clarify that falconry facilities may be inspected only when the licensee is present. Falconers had expressed concern that Department staff entering their facilities without the owner present would place unnecessary stress on the birds. The Commission also added language to make it clear that attempts to avoid inspection by repeatedly being unavailable may result in license suspension. Licenses suspended under these circumstances may be reinstated upon completion of an inspection finding no violations of these regulations or any license conditions.

Errors in the ISOR have also been corrected: in subsection 670(e)(2)(C), the word "expired" should not have been added and is therefore deleted; and in subsection 670(e)(6)(C)1, the words "and eagles" should not have been added and are therefore deleted.

UPDATE

The Commission adopted the proposed changes to the regulation on December 8, 2016, as set forth in the Amended Initial Statement of Reasons, amending Section 670, Title 14, California Code of Regulations (CCR), establishing Falconry regulations in conformance with federal requirements.

Correction 1: The Amended ISOR, February 17, 2017, correctly deleted within the Amended Informative Digest the following phrase (top of page 2), however, no explanation was given: the provision described was never introduced as part of the Regulatory Text and was in error:

~~“Adding terms for renewal, at the Department’s discretion, of a license where the licensee has been unlawfully in active practice without annual renewal and the payment of fees.”~~

Correction 2: The regulatory text was further correctly amended, but not adequately described in the Amended Informative Digest, to delete the following originally proposed provision in 670(j)(3)(A) because it conflicts with the new amended provisions for inspection:

~~“The department will make a reasonable attempt to contact the licensee prior to conducting the inspection.”~~

The adopted regulation maintains a State falconry program that meets or exceeds standards established in federal law; revises inspection language to clarify that it applies to inspections of falconry facilities rather than entire premises; provides that inspections will occur with the licensee present; and authorizes license suspensions or denials for failure to allow facility inspections.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.