

- a. Ms. Fearing thanked the Commission and the Department for developing stronger penalties to help combat poaching of California's natural resources.

Response: The continued support to reduce poaching is appreciated.

VI. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 9th Street
Sacramento, CA 95814

VII. Location of Department Files:

Department of Fish and Wildlife
1416 9th Street
Sacramento, CA 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified by or brought to the attention of Commission staff that would implement the Fish and Game Code section 12013.3 requirement that the commission adopt "trophy" definitions for deer, elk, antelope, bighorn sheep, and wild turkey for the purpose of enhanced fines and penalties for poaching convictions.

Only one alternative was considered in relation to bighorn sheep. Two states in the western states surveyed used "any sheep" as a standard. Since Fish and Game Code Section 12008.5 already increases the penalty for poaching any bighorn sheep and, Fish and Game Code Section 12013.3 specifically mandates the sheep be characterized by "establishing a trophy designation and monetary value based on the size or related characteristics of deer, elk, antelope, bighorn sheep, and wild turkeys or parts thereof," this alternative was considered but rejected. Instead, the Commission proposes to use a standard similar to the existing regulatory language set forth in Section 362(c), which is consistent with the one-half to three-quarter size curl standard used in several other western states.

(b) No Change Alternative:

The No Change Alternative is not a reasonable alternative due to the legislative mandate of Fish and Game Code Section 12013.3, that the Fish and Game Commission (Commission) adopt definitions of “trophy” deer, elk, antelope, bighorn sheep, and wild turkey for the purpose of enhanced fines and penalties for conviction of related poaching offenses.

(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 has been adopted, 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.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the adopted 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, because the proposed regulations do not add new uses or remove existing uses.

(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 business, the elimination of existing businesses or the expansion of businesses in California because the proposed regulations do not add new uses or remove existing uses.

The Commission anticipates benefits to the health and welfare of California residents. Participation in hunting opportunities and the general positive support from representatives of legitimate ethical hunting organizations fosters conservation through education and appreciation of California's wildlife.

The Commission does not anticipate any benefits to worker safety.

The Commission anticipates benefits to the State's environment. It is the policy of the State to encourage the conservation, maintenance, and utilization of the living resources. The proposed action will further this core objective.

(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:

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

The Fish and Game Commission (Commission) proposes to implement the provisions of Fish and Game Code (**FGC**) Section 12013.3 by adopting definitions of “trophy” deer, elk, antelope, bighorn sheep, and wild turkey. **This will allow imposition of enhanced fines and penalties when trophy specimens are taken illegally as provided in FGC Section 12013.3.**

Subdivision (b) of Section 12013.3 provides, “The Commission shall adopt regulations to implement this section, including establishing a trophy designation and monetary value based on the size or related characteristics of deer, elk, antelope, bighorn sheep, and wild turkey.”

This rulemaking process proposes to add Section 748.6 to Title 14, California Code of Regulations, to establish standards that can be used by the courts when imposing criminal fines in cases where individuals are convicted of the violations set forth in Fish and Game Code section 12013.3.

Summary of Proposed Additions

The Commission is proposing the following regulatory changes:

Add Subsection (a) of Section 748.6

For purposes of implementing the penalty enhancements set forth in Fish and Game Code section 12013.3, the following subsections will be added to Title 14 and animals meeting the criteria specified will be designated as trophies:

Add subsection (1) In deer hunting zones A, all B zones, D10, D11, D13, D15, and D16, any deer with four or more points on either antler (excluding eye guards) or with an outside antler spread of at least sixteen inches. In all other deer hunting zones (all X zones, all C zones, and zones D3, D4, D5, D6, D7, D8, D9, D12, D14, D 17, D19), any deer with four or more points on either antler (excluding eye guards) or with an outside antler spread of at least twenty-two inches.

For purposes of establishing a trophy standard for deer, California’s deer hunting zones are divided into two groups each with a different standard that qualifies as a trophy.

Deer zones A, all B zones, D10, D11, D13, D15, D16: Deer having four or more points on at least one side not including eye guards or an outside spread of 16 inches or greater.

For all X zones and all C zones, and zones D3, D4, D5, D6, D7, D8, D9, D12, D14, D 17, D19 (there is no D18 zone): Deer having four or more points on at least one side not including eye guards or an outside spread of 22 inches or greater.

Add subsection (2) Any elk with five or more points on either antler (including eye

guards);

The standard for seven of the eight western states that have standards for elk was either five or six antler points on at least one side. In California, public outreach to elk hunting and wildlife management groups consistently supported a standard of at least five points on one side. A standard of five points on one side is a preferred and widely regarded as a trophy quality elk in California.

Add subsection (3) Any pronghorn antelope with a horn that is at least fourteen inches in length;

The standard for seven of the eight western states that have standards for antelope was a 14-inch horn on at least one side. In California, public outreach to big game hunting and wildlife management groups consistently supported a standard of at least one horn greater than or equal to 14 inches on one side. A 14-inch standard on at least one side is preferred and widely regarded as a trophy quality antelope.

Add subsection (4) Any bighorn sheep ram as defined as follows: a male bighorn sheep (Ovis canadensis) having at least one horn, the tip of which extends beyond a point in a straight line beginning at the front (anterior) edge of the horn base, and extending downward through the rear (posterior) edge of the visible portion of the eye and continuing downward through the horn. All reference points are based on viewing the ram directly from a 90 degree angle from which the head is facing.

The standards for bighorn sheep horn size in six of the western states surveyed were between a one-half to three-quarter curl on at least one side. Measurement standards vary with how those curl sizes are measured, however. California hunters who are drawn via lottery to hunt bighorn sheep have been held to a very high standard since sheep hunting was authorized. The standard for measurement is inflexible, is reliable for hunters on a visual basis, and is within the range of the one-half to three-quarter size curl standard used in several other states.

The Commission proposes to use the standard similar to what is stated in Section 362(c), Title 14, CCR. Relying upon strict language in 362(c), Title 14, CCR, however, would inadvertently omit Sierra Nevada bighorn sheep, a protected endangered species that is not hunted in California, so the language is modified to apply to all bighorn sheep in California.

A mature bighorn sheep ram is defined as follows: a male bighorn sheep (*Ovis canadensis*) having at least one horn, the tip of which extends beyond a point in a straight line beginning at the front (anterior) edge of the horn base, and extending downward through the rear (posterior) edge of the visible portion of the eye and continuing downward through the horn. All reference points are based on viewing the ram directly from a 90 degree angle from which the head is facing.

Add subsection (5) Any wild turkey with either a spur that is at least one inch in length, or a beard (measured by the longest strand of one or more beards) that is eight or more inches.

No other state uses a measurement standard for wild turkey, so the Department proposed and solicited input from several representatives of various non-governmental hunting and wildlife conservation organizations.

The two most reliable reference points for measuring wild turkey used by hunters and biologists are the beard and spur lengths. The wild turkey beard is most prevalent on the males, is similar in look to a long tuft of hair, hence the term “beard” but in actuality is a group of modified feathers. Between 10 and 20 percent of females also have beards, but they are not usually as long, and an even lower percentage of hens have spurs.

The average lifespan of wild turkey is three years and it takes the average male bird, called a Tom, this long to develop a beard to reach a length of eight or more inches, and for the spurs to reach a length of at least one inch. Most hunters consider a bird with either of these two physical characteristics of this size a “trophy” sized animal.

Add Subsection (b) of Section 748.6

For purposes of measuring the attributes listed in Subsection (a) Section 748.6, to designate a game mammal or wild turkey a trophy, the following subsections will be added to Title 14:

Definitions.

- (1) A point is a projection of the antler at least one inch long and longer than the width of its base.*
- (2) The outside antler spread is measured between perpendiculars at a right angle to the center line of the skull at the widest part, whether across the main beams or points.*
- (3) An eye guard is a projection on the lower one-third of the antler.*
- (4) The length of a pronghorn antelope horn is measured with a flexible measuring tape along the center of the outer curve from the tip of the horn to a point in line with the lowest edge base, using a straight edge to establish the line end.*
- (5) The length of a wild turkey’s beard is the distance from the turkey’s skin to the tip of the longest strand of one or more beards, and the length of a spur is measured along the outside curve of the spur.*

The definitions section clarifies how the size characteristics are technically defined. They rely upon commonly used measurement standards in the hunting and outdoors industry, as well as insure that the regulations are clear and legally enforceable.

Add Subsection (c) of Section 748.6

For purposes of assessing penalties as set forth in Fish and Game Code section 12013.3(a), the following subsection will be added to Title 14 to aide in determining the

appropriate fine within the range:

In determining the monetary value of any fine imposed pursuant to Fish and Game Code section 12013.3, courts should consider the totality of the circumstances, including but not limited to, the degree to which the standards set forth in subsection (a) are exceeded, and any prior violations of the defendant.

This subsection will implement Fish and Game Code Section 12013.3 by encouraging courts to consider the degree by which the trophy standards are exceeded in determining the amount of criminal fines.

Benefits of the Proposed Regulations

The Commission anticipates benefits to the health and welfare of California residents. Participation in hunting opportunities and the general positive support from representatives of legitimate ethical hunting organizations fosters conservation through education and appreciation of California's wildlife.

The Commission anticipates benefits to the environment by initiating a greater deterrence to poaching crimes and increased penalties associated with poaching offenders. It is the policy of the State to encourage the conservation, maintenance, and utilization of its living resources. The proposed regulations will further this core objective.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt hunting regulations (Fish and Game Code, sections 200, 202 and 205). The proposed regulations are consistent with general hunting regulations in Chapters 1 and 3 of Subdivision 2 of Division 1, Title 14, CCR. No other State agency has authority to regulate the methods and the manner by which wildlife may be taken.

Update:

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

The Commission adopted the proposed regulations as described in the Initial Statement of Reasons on December 8, 2016.

Non-Substantive Changes made to the Regulation Text during Office of Administrative Law Review

- 1. Several non-substantive changes were made to Section 748.6 to correct grammar, punctuation and formatting.**

- 2. Subsection (a)(1) was changed from “all B zones” to “B1-B6” as B1-B6 is inclusive of the former text.**
- 3. Subsection (a)(4) was changed to remove the phrase “a point in” as it was redundant.**