

Defining trophy characteristics and allowing for imposition of a range of fines commensurate with the egregious nature of the violation, or violations, will potentially provide a deterrent to would be poachers, when informed of a court's new authority to increase the fines and penalties. Current violations of the Fish and Game Code or Title 14 are predominantly misdemeanors with a penalty of a six month sentence in county jail and up to a \$1,000 fine, unless otherwise specified. The courts rarely sentence a convicted poacher to a jail term and are left with no significant authority to assess a greater penalty for many of the most egregious poaching violations. The courts need the authority to assess a penalty for an egregious violation, or multiple violations.

Present Regulations

There are no current regulations that define enhanced characteristics for game mammals or wild turkeys, and there are no monetary values established if convicted of poaching an animal identified as having "enhanced characteristics", with the exception of Fish and Game Code Section 12008.5 which addresses the unlawful take of any bighorn sheep.

Fish and Game Code Section 12008.5: Notwithstanding Section 12000, the punishment for taking any bighorn sheep in violation of Chapter 11 (commencing with Section 4900) of Part 3 of Division 4, or any regulation adopted pursuant thereto, is a fine of not more than two thousand dollars (\$2,000) or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

Proposed Regulation Changes

The Department of Fish and Wildlife (Department) developed the following designations after researching similar standards of nine western states. The states of Nevada, Arizona, Colorado, Idaho, Oregon, Washington, Utah, Montana and New Mexico all have standards for the purpose of increasing penalties associated with poaching of specified animals. Wyoming has no size designations, but the law does increase the penalties associated with poaching certain game mammals out of season. The Department then reached out to interested user groups and non-governmental organizations associated with hunting and wildlife management to gain input on the proposed standards. No state has a trophy size designation for wild turkey.

The Commission is proposing to add a new Section 748.6 to Title 14, CCR, as follows:

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 are proposed to 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.

Justification

Deer are California's most popular big game hunted species. California's deer populations include two primary subspecies: mule deer and blacktail deer. The deer are managed by the Department of Fish and Wildlife by herds, large and small, across the state's bioregions. Mule deer make up the majority of the deer in the eastern half of the state of California all the way to the eastern Sierra and into Nevada and are, on average, larger deer. Blacktail deer make up the majority of the deer in the western half of the state of California and are, on average, smaller deer. Each subspecies of deer has the potential to migrate across boundaries and hybridization is a regular occurrence. For the purposes of these regulations, the Commission proposes to divide the state in two major sections with blacktail deer predominantly to the west and mule deer predominantly to the east.

California's deer hunting zones A, B, and several D zones on the western half of California offer readily available tags in most zones. The deer in these zones are predominantly blacktail. These zones offer opportunity to deer hunters because the tags in many of the zones rarely, if ever, sell out. However, success and trophy quality is generally lower. California's X zones and many of the D deer zones are available to hunt by lottery and are generally harder to draw but offer lower hunting pressure and higher overall success and generally higher trophy opportunity.

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);

Justification

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 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;

Justification

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.

Justification

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.

Justification

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.

Necessity for all of subsection (a)

The proposed regulatory changes are needed to implement subdivision (b) of Fish and Game Code Section 12013.3, which requires the Commission to adopt regulations “establishing a trophy designation...based on the size or related characteristics of deer, elk, antelope, bighorn sheep, and wild turkeys.”

Add Subsection (b) of Section 748.6

For purposes of measuring the attributes listed in Subsection (a) of Section 748.6, to designate a game mammal or wild turkey a trophy, the following subsections are proposed for addition 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.*

Justification

The definitions section clarifies terminology and describes a standardized process to measure key characteristics of the animals. The definitions and measurements are based upon commonly used standards in the hunting and outdoors industry, and their use will promote clear and consistent enforcement.

Necessity

This subsection defines terms used within Fish and Game Code Section 12013.3 and/or the proposed regulations. These definitions are necessary in that they provide the public, wildlife officers, and the courts with the details necessary to understand and implement Fish and Game Code section 12013.3 and the proposed regulations.

Add Subsection (c) of Section 748.6

For purposes of imposing criminal penalties as set forth in Fish and Game Code section 12013.3(a), the following subsection is proposed to be added to Title 14 to aid the courts in determining the appropriate fine

within the range authorized by the law:

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.

Justification

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.

Necessity

Fish and Game Code 12013.3 authorizes the Fish and Game Commission to define trophy characteristics but it statutorily mandated a range of fines associated with the violation, or violations. Subsection (c) of Section 748.6 provides the court with guidance on how much to assess a convicted poacher, within the range defined in statute, based on not just the violation itself, but the degree by which the violation, or violations, occurred.

It is possible for a single poaching act to be in violation of all six subsections of 12013.3(a). It is also possible for a poacher to specifically target a certain animal of trophy category and pursue that animal in violation of only one poaching law, bypassing other animals with lesser, or non-defined trophy characteristics, but to such a degree that it still meets the original intent of the legislation. In addition, the courts will also be authorized to take into account the violation history of the defendant.

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

Authority: Section 12013.3, Fish and Game Code.

Reference: Section 12013.3, 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:

On April 28, 2016, representatives from the Department of Fish and Wildlife Law Enforcement Division used a stakeholder group meeting made up of several non-governmental organizations involved in hunting and wildlife management to propose the trophy sized standards. Those elected Board members of the respective organizations represented tens of thousands of hunters in California and throughout the country who contribute time and resources to wildlife management projects, and included representatives of the two organizations that sponsored the legislation in 2012. Feedback from those representatives was factored into the proposed trophy standards for each species.

On May 18, 2016, a representative from the Department of Fish and Wildlife Law Enforcement Division presented the regulation change proposal to the Wildlife Resources Committee and took public questions from the audience and many of the same persons who offered comments at the earlier stakeholder group meeting.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

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.

No other alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

The No Change Alternative is not a reasonable alternative due to the legislative mandate.

(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 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. The Commission anticipates benefits to the environment by initiating a greater deterrence to poaching crimes and increased penalties associated with poaching offenders.

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 regulations only imposes penalty enhancements for activity which is already illegal.

(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 only imposes penalty enhancements for activity which is already illegal.

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:

Local Governments may have the potential for savings in the range of \$15,000 to \$45,000 per year, because fifty percent of any fine revenue from enhanced penalties would be shared with the county in which the violation occurred.

(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:

This rulemaking process proposes to designate specified characteristics for select big game animals and wild turkeys, and establish criteria for fine assessments for individuals convicted of poaching listed animals. Fish and Game Code Section 12013.3(a), specifies that the punishment for a violation involving big game, “shall be a fine of not less than \$5,000 nor more than \$40,000, and for wild turkey, “a fine of not less than \$2,000 nor more than \$5,000, or imprisonment in the county jail for not more than one year, or both that fine and imprisonment.”

If fine revenue is collected, 50% would be paid to the county in which the offense was committed and the remainder would be deposited in the Big Game Management Account or the Upland Game Bird Account.

A review of the Law Enforcement Division’s citation statistics database for violations that involved trophy class animals suggests that the Department anticipates an average of ten cases per year. The actual fine assessed and judgement collection amounts will vary depending on the particulars of each case. If the penalty average is \$10,000, then one half of the amount collected from ten cases per year would total to \$50,000. However the actual judgement collection success rate may result in 40% less (approximately \$30,000) in potential total additional fine revenue per year to the Department.

Table 1. Department Annual Enhanced Penalties Revenue Projection

Cases per Year	\$10,000 Penalty	60 % Actual Collection
5	\$ 25,000	\$ 15,000
10	\$ 50,000	\$ 30,000
15	\$ 75,000	\$ 45,000
Expected Average Revenue		\$ 30,000

Note: Fifty percent of the penalty revenue is shared with the county in which the violation occurred.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The proposed amendments will not create or eliminate jobs within the state because the proposed regulations do not add new uses or remove existing uses.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Department does not anticipate the creation of any new businesses or the elimination of existing businesses because the proposed regulations do not add new uses or remove existing uses.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed amendments are not expected to result in the expansion of businesses currently doing business within the state because the proposed regulations do not add new uses or remove existing uses.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

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.

(e) Benefits of the Regulation to Worker Safety:

The proposed regulations do not have foreseeable benefits to worker safety because the regulations do not address working conditions.

(f) Benefits of the Regulation to the State's Environment:

The proposed regulations are anticipated to benefit the State's environment by encouraging the conservation, maintenance, and sustainable harvest of the State's living resources.

Informative Digest/Policy Statement Overview

The Fish and Game Commission (Commission) proposes to implement the provisions of Fish and Game Code Section 12013.3 by adopting definitions of “trophy” deer, elk, antelope, bighorn sheep, and wild turkey for the purpose of enhanced fines and penalties for poaching animals meeting specified criteria as required below.

“(b) 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 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.