

STAFF SUMMARY FOR JUNE 10-11, 2015

22. UPLAND GAME BIRD**Today's Item****Information** **Action**

Discuss proposed changes to upland game bird regulations.

Summary of Previous/Future Actions

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|-------------------------------------|---------------------------------------|
| • WRC vetting | Jan. 14, 2015; Sacramento |
| • FGC accepted WRC/DFW proposal | Feb 11-12, 2015; Sacramento |
| • Notice hearing | Apr 8-9, 2015; Santa Rosa |
| • Today's discussion hearing | Jun 10-11, 2015; Mammoth Lakes |
| • Adoption hearing | Aug 4-5, 2015; Fortuna |

Background

FGC annually adopts regulations to set limits on upland game bird hunting. Initially DFW provides ranges until the conclusion of population survey efforts are completed in the spring. A final recommendation within the range will be provided at the Aug FGC meeting. Two changes are proposed for the 2015-2016 season:

1. Ranges for sage grouse
 - East Lassen Zone (two-bird permits) [0-50]
 - Central Lassen Zone (two-bird permits) [0-50]
 - North Mono Zone (one-bird permits) [0-100]
 - South Mono Zone (one-bird permits) [0-100]
2. Extend the close of shooting time for the spring wild turkey hunting by one hour. Shooting time for spring turkey hunters would close at 5:00 p.m. instead of 4:00 p.m.

Significant Public Comments

1. Center for Biological Diversity (CBD) requests FGC not permit any sage-grouse hunting in the 2015-2016 season to support conservation (Exhibit 2).

Recommendation (N/A)**Exhibits**

1. Initial statement of reasons
2. Letter from CBD, received May 28, 2015

Motion/Direction (N/A)

Commission to annually adopt regulations pertaining to the hunting of migratory birds that conform with, or further restrict, the regulations prescribed by the United States Fish and Wildlife Service (USFWS) pursuant to their authority under the Migratory Bird Treaty Act. The Fish and Game Commission selects and establishes in State regulations the specific hunting season dates and daily bag limits within the federal frameworks.

Two proposals are evaluated for regulation changes as follows:

1. Amend subsection 300(a)(1)(D)4. Adjust annual number of sage grouse hunting permits by zone.

Existing regulations provide for the number of sage grouse hunting permits in the East Lassen, Central Lassen, North Mono, and South Mono zones. For the 2015-2016 season, the Department of Fish and Wildlife (Department) has proposed a range of permits from which a final number of permits will be determined, based on spring lek counts. Ranges are necessary at this time because the final number of permits cannot be determined until spring lek counts are conducted in April. Current regulations provide permit numbers for sage grouse based on population estimates from 2014 and need to be updated to reflect 2015 estimates.

In March 2010, the USFWS determined that 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. A proposed rule was scheduled on the range-wide finding for 2015, but has since been delayed by Congress and now it is not expected to occur in 2015.

In October 2013, the USFWS proposed that the Bi-State DPS should be listed as threatened under the ESA. A final ruling, similar to the range-wide finding discussed above, is not expected in 2015. If this proposal becomes a final rule, the threatened status of the Bi-State DPS would preclude future hunting.

The risks to sage grouse are largely habitat-based. Hunting was not considered a high risk factor in the “warranted, but precluded” finding for sage grouse range-wide by the USFWS, which does not preclude states from continued hunting. In fact, no states have closed hunting as the result of the range-wide ESA decision. The proposed listing rule for greater sage grouse range-wide will be made in fiscal year July 2015 – June 2016.

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 as adopted by the Commission in 2007. Since sage grouse were given candidacy under ESA in 2010, the Department has taken an increasingly conservative approach to recommending sage grouse hunting permits and has not recommended any increases in permits despite some of the highest spring breeding populations ever recorded in the Mono zones. The permit system used in California is considered one of the most conservative and best-controlled hunts in sage grouse range.

The Commission took emergency action in 2012 to reduce the number of permits for both the East Lassen and Central Lassen Hunt Zones to zero. This action was taken following the Rush Fire, which encompassed more than 272,000 acres in California, almost entirely within the East Lassen Zone. Because of substantial breeding population declines following the fire, the Department did not recommend any hunting permits in 2013 or 2014. Wildfire is considered one of the highest risks to sage grouse habitats, particularly in northeastern California.

The Department will continue to conduct intensive breeding population surveys in spring 2015, whereby male sage grouse will be counted on all known leks in California, including leks both within hunt zones and in non-hunted areas. These lek counts will be used to estimate population size and a population model will expand 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.

The Department recommendation for 2015 will fall within the following ranges:

	Current (2014) Limit	Proposed (2015) Range
a. East Lassen Zone (two-bird permits)	0	[0-50]
b. Central Lassen Zone (two-bird permits)	0	[0-50]
c. North Mono Zone (one-bird permits)	30	[0-100]
d. South Mono Zone (one-bird permits)	0	[0-100]

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

- Size and trend of the spring breeding population in each hunt zone based on lek counts conducted in March and April.

- The allowable harvest level will not exceed 5% of the predicted fall population.
 - 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 Section 310.5 to add one hour to the end of shooting time for spring turkey hunters.

The shooting time for spring turkey hunting is currently established from one-half hour before sunrise to 4:00 pm. The addition of one hour is being proposed to provide additional hunting opportunity during the spring turkey hunting season. Spring shooting hours for wild turkey are cut off before sunset as a traditional wildlife management technique to allow the birds opportunities to breed and find roosts. Hunters have informally requested this increase to offset time lost when daylight saving was moved from April to March several years ago. The extension to 5:00 PM will still provide adequate protection for the spring breeding population.

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

Authority: Sections 200, 202, 203, 355, and 3000 of the Fish and Game Code.

Reference: Sections 200, 202, 203, 203.1, 215, 220, 355, 356, and 3000 of the 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 West Sacramento, CA on January 14, 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:

1. Sage grouse permit numbers would not change from 2014 and permits for 2015 would not be calculated based on current year data.
2. Shooting time for spring turkey hunting would not change; additional hunting opportunity would not be realized by adding an additional hour to the end of shooting time.

(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.

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 to bag limits and shooting hours.

(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 the proposed action would

have on the creation or elimination of jobs or businesses in California or on the expansion of businesses in California because the regulations propose only minor changes to bag limits and shooting hours. The Commission does not anticipate benefits to worker safety because the regulations do not address working conditions.

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

(a) Effects of the regulation on the creation or elimination of jobs within the state

Positive impacts to jobs and/or businesses that provide services to upland game bird hunters will be realized with the adoption of the proposed upland game bird hunting regulations for the 2015-16 season. This is based on the 2011 U.S. Fish and Wildlife National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California (issued Feb. 2013). The report estimates that hunters contributed about \$142,412,000 to small businesses

in California during the 2011 small game hunting season. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. 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/2013pubs/fhw11-ca.pdf>.

- (b) Effects of the regulation 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, 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.

- (c) Effects of the regulation 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. The minor changes in bag limits and shooting hours in the proposed regulations are, by themselves, unlikely to stimulate the expansion of businesses within California.

- (d) Benefits of the regulation 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.

- (e) Benefits of the regulation to worker safety

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

(f) Benefits of the regulation 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 resident and migratory upland game birds to ensure those objectives are met.

(g) Concurrence with other Statutory Requirements:

Not applicable

Informative Digest/Policy Statement Overview

Current regulations in Title 14, California Code of Regulations (CCR), provide general hunting seasons for taking resident and migratory upland game birds under Section 300. Current regulations in Title 14, CCR, under Section 310.5 establishes shooting times for all upland game birds. The Department of Fish and Wildlife (Department) is recommending two regulation changes under these sections as follows:

1. Adjust annual number of sage grouse hunting permits by zone.

Current regulations under subsection 300(a)(1)(D)4. provide a number of permits for the general sage grouse season in each of four zones. At this time the Department has proposed a range of permits specific for all four hunt zones. The final permit numbers will be proposed in June after spring lek counts are completed and annual population data are analyzed. Permit ranges for sage grouse hunting in 2015 are recommended as follows:

- a. East Lassen: [0-50] (two-bird) permits
- b. Central Lassen: [0-50] (two-bird) permits
- c. North Mono: [0-100] (one-bird) permits
- d. South Mono: [0-100] (one-bird) permits

2. Increase shooting time provided for spring turkey hunters under Section 310.5 by one hour; shooting time would end at 5:00 pm instead of at 4:00 pm as provided under current regulation.

Benefits of the Proposed Regulations

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

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202, and 203, has the sole authority to regulate upland game bird hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to hunting of resident game birds are consistent with Sections 550-553, 630, 703 and 4501 of Title 14. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to adopt upland game bird hunting regulations in California.

REGULATORY LANGUAGE

Section 300, Title 14, is amended to read:

§ 300. Upland Game Birds.

. . . [No changes to subsections 300(a)(1)(A-C)]

<i>Species</i>	<i>1. Seasons</i>	<i>2. Daily Bag and Possession Limits</i>
(D) Sage Grouse	The second Saturday in September extending for two consecutive days	See area open zone descriptions in subsection 300(a)(1)(D)3. East and Central Lassen zones: Bag Limit: 2 sage grouse per day, 2 per season Possession Limit: 2 sage grouse per season North Mono and South Mono zones: Bag Limit: 1 sage grouse per day, 1 per season Possession Limit: 1 sage grouse per season

SAGE GROUSE HUNTING ZONE DESCRIPTIONS AND PERMIT PROCESS

3. Area Open Zone Descriptions:

a. East Lassen Zone:

That portion of Lassen County beginning at the intersection of Highway 395 and County Road 502 in the town of Ravendale; north and east on County Road 502 to County Road 526 (Buckhorn Road); east on County Road 526 to the Nevada state line; south along the Nevada state line to its intersection with County Road 320 (Wendel-Flanigan Road); northwest on County Road 320 to its intersection with Highway 395 between Wendel and Litchfield north on Highway 395 to the point of beginning.

b. Central Lassen Zone:

That portion of Lassen County beginning at the intersection of Highway 139 and County Road 513 (Termo-Grasshopper Road); east on County Road 513 to its intersection with County Road 523 (Westside Road); north on County Road 523 to its intersection with County Road 525 (Brockman Road); east on County Road 525 to its intersection with Highway 395; south on Highway 395 to its intersection with Highway

36 in the town of Johnstonville; west on Highway 36 to its intersection with Highway 139 in Susanville; north on Highway 139 to the point of beginning.

c. North Mono Zone:

That portion of Mono County beginning at the intersection of Highway 182 and the California-Nevada state line; south and east along the California-Nevada state line to Highway 167; west along Highway 167 to Highway 395; north along Highway 395 to Highway 182 at Bridgeport; north along Highway 182 to the point of beginning.

d. South Mono Zone:

That portion of Mono County beginning at the intersection of U.S. Highway 6 and U.S. Highway 395; north along U.S. Highway 6 to the intersection of U.S. Highway 120; west along U.S. Highway 120 to the intersection of the Benton Crossing Road; west along Benton Crossing Road to the intersection of Owens River Road; west along Owens River Road to the intersection of U.S. Highway 395; south along U.S. Highway 395 to the point of beginning.

No open season in the balance of the state not included in the above open zones.

4. Number of Permits:

- a. East Lassen Zone: 0 [0-50] permits
- b. Central Lassen Zone: 0 [0-50] permits
- c. North Mono Zone: 30 [0-100] permits
- d. South Mono Zone: 0 [0-100] permits

5. Permit Process:

The free sage grouse hunting permits shall be issued by random drawing. Applicants must have a valid California hunting license and shall submit only one drawing application for either the East Lassen Zone, Central Lassen Zone, North Mono Zone, or the South Mono Zone. Up to four hunters may apply as a party. Applications must be submitted through the Automated License Data System by August 10. Each application will be issued a computer-generated random number and permits shall be issued by random number (from lowest to highest). Party applications shall receive a single random number and parties shall not be split to meet the number of permits available. Successful applicants will be notified by mail prior to the opening date of the season. Permits are nontransferable.

6. Falconry Only Permits:

Applicants desiring to use a sage grouse permit during the falconry-only season must declare upon the application that the permit is for falconry only.

. . . [No changes to subsections 300(a)(1)(E) through 300(b)]

Note: 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 310.5, Title 14, is amended to read:

§ 310.5 Shooting Hours for Upland Game Birds.

The shooting hours for all upland game birds, except for pheasants and the spring wild turkey season, shall be from one-half hour before sunrise to sunset. The shooting hours for pheasants shall be from 8:00 a.m. to sunset. The shooting hours for the spring wild turkey season shall be from one-half hour before sunrise to 54:00 p.m.

Note: Authority cited: Section 3000, Fish and Game Code. Reference : Section 3000, Fish and Game Code.



VIA ELECTRONIC MAIL

May 28, 2015

Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814
fgc@fgc.ca.gov

Re: Item #22; June 11, 2015 agenda; Discussion of proposed changes to upland game bird regulations (Sections 300 and 708.18, Title 14, CCR)

Dear Commissioners,

I am writing on behalf of the Center for Biological Diversity (“Center”) regarding Item #22 on the June 11, 2015 agenda listed as “Discussion of proposed changes to upland game bird regulations (Sections 300 and 708.18, Title 14, CCR).” According to the Notice of Proposed Changes in Regulations this matter will not be voted on by the Commission until the August 5, 2015 meeting. The Center intends to submit detailed comments on the proposed changes to the Commission for consideration at the August meeting. However, as an initial matter the Center provides the following comments to help inform the discussion at the June 11, 2015 meeting.

The Center has serious concerns about the Department’s proposal to change the upland bird hunting regulations to provide for a range of permits for sage grouse in the 2015-2016 season with limits as high as 50 two-bird permits or 100 one-bird permits in each of the four zones. Given the precarious status of this rare bird, the Commission should not allow any hunting to occur in the 2015-2016 season in order to support conservation.

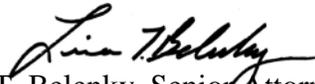
Although hunting has not been identified as the *primary* reason for the decline of the sage grouse in California, it remains a factor that undermines conservation of this species. As the Department itself admits: “Concerns about the potential effects of hunting on sage grouse through additive mortality have been expressed in the scientific literature, including studies from California.” (ISOR at 3.) Moreover, the California populations of the sage grouse in California are generally small and isolated putting them at risk of further decline and extinction from stochastic events as well as increased development within sensitive habitat.

The precautionary principle should inform the Commission’s decisions on this matter and a zero permit limit for all sage grouse populations in California should be adopted for the 2015-2016 season. Department’s proposal to delay in determining the specific number of permits is needed until after the spring 2015 lek and population estimates and modeling are completed, would remove the specific decision on the permits from the Commission and undermine public

participation in that process. Moreover, there is no scientific support provided for the Department's proposal to vastly *increase* the upper limit for permits over the permit amounts authorized by the Commission for last season (30 permits authorized in the North Mono zone and no permits authorized in the South Mono, East Lassen or Central Lassen zones) to up to 100 one-bird permits in the North Mono and South Mono zones and up to 50 two-bird permits in East Lassen and Central Lassen zones.

The Commission should not delay engaging directly with this important issue. The Center urges the Commission to reject the Department's proposal to provide a range of permit limits for sage grouse in the 2015-2016 season and, rather, impose a zero limit for the 2015-2016 season in all zones as a key element protecting the California sage grouse populations in the face of multiple threats.

Sincerely,



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