

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

(Continuation of Register 2004, No. 28-Z, and Commission Meeting of June 24, 2004)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 219, 240, 713, 1050, 3003.1, 4001, 4005, 4006, 4009.5, 4012, and 4150, of the Fish and Game Code, and to implement, interpret or make specific Sections 200, 202, 203, 203.1, 206, 207, 211 – 222, 713, 1050, 3003.1, 4000 - 4004, 4005, 4006, 4009.5, 4012, 4150, 4152, 4180, and 4181, of said Code, proposes to amend Sections 460, 465.5, and 478 and add Sections 458.1, 458.2, 458.3, and 460.1, Title 14, California Code of Regulations, relating to Trapping Furbearers, Nongame Mammals and Nonnative Red Fox.

Proposed changes to subsections 465.5(g) as set forth in the first notice regarding exclusion of bats from structures (Notice Register 2004, No. 28-Z, published July 9, 2004) remain the same, **except for the additional exclusion period of February 15 through April 15, and September 1 through October 15, as recommended by public comment (see Updated Informative Digests below).**

Updated Informative Digest/Policy Statement Overview for Section 465.5

Under current regulations (Sections 460, 461, 462, 463, 464, 465, 465.5, 466, 467, 472, 473, 474, 475, 478, 478.1, and 479 Title 14, CCR), furbearing and nongame mammals may be taken for recreation and commerce in fur and for other purposes under a Department–issued trapping license, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify furbearing and nongame mammal seasons, areas, bag and possession limits; methods of take; use of traps; hours of take; and requirements for trapping statements or reports.

The proposed regulatory changes will create separate sections regarding leg-hold trap use; trapping license examination fees; exemption from Department of Fish and Game trapping licensure when trapping certain furbearing and nongame mammal species that are a nuisance or injuring crops or property, and; nonnative red fox trapping and hunting season. Additionally, the proposed changes will amend existing sections that prohibit the take of red fox; regulate trap use; and regulate the bobcat hunting and trapping seasons.

The following is a summary of the changes proposed by amending sections 460, 465.5, and 478, and adding sections 458.1, 458.2, 458.3, and 460.1, Title 14, CCR:

- Establish a separate section regarding leg-hold trap use to clarify that they may not be used, except in extraordinary cases to protect human health or safety;
- Establish a separate section authorizing the Department of Fish and Game to charge a fee to apply for a trapping license examination to help the Department recoup its costs of administering this examination;
- Establish a separate section that exempts from the trapping license requirement the trapping of fox squirrels, gophers, ground squirrels, mice, moles, opossums, raccoons, rats, skunks, and voles that are a nuisance or injuring crops or property. This would relieve persons, who have trapping licenses or their equivalent from the Department of Pesticide Regulation or the Structural Pest Control Board to trap these same mammals, from having to procure a second license from the Department of Fish and Game. The proposed regulation also would stipulate that no raw furs of these animals taken pursuant to this section may be sold;
- Identify the native and threatened Sierra Nevada red fox as the red fox subspecies which may not be taken at any time and distinguish it from the nonnative red fox subspecies;

- Establish a nonnative red fox hunting and trapping season and area to provide additional hunting and trapping opportunity and to control the spread of and possibly reduce the nonnative red fox population. The proposed regulation will also make unlawful the take of red fox for any profit-making purposes, which is consistent with Fish and Game Code Section 4012. The existing regulation in Section 460, Title 14, CCR, was established to protect the native Sierra Nevada red fox (*Vulpes vulpes necator*), a high-elevation subspecies now classified as threatened in California. The nonnative red fox (*Vulpes vulpes regalis*) was introduced decades ago for fur farming and hunting. It has proliferated in low elevation habitats to the extent that it is now considered an agricultural pest, and a threat to some wildlife species. This proposal adds Section 460.1, Title 14, CCR, in an effort to permit hunting and trapping for nonnative red foxes in an area of lower elevations that is far removed from the range of the native Sierra Nevada red fox. Controlling and/or reducing the nonnative red fox population in California is desirable, as these mammals prey on rodents, rabbits, reptiles, shorebirds, waterfowl, and other ground-nesting bird species, including some threatened and endangered species;
- Amend the regulation governing the use of traps in order to:
 - Exempt completely submerged traps from the daily visitation requirement because of their kill-type design and the intensive labor required to set up;
 - Allow for other practical methods of dispatch to ensure rapid death of trapped furbearing or nongame mammals;
 - Provide that the existing requirement, that trappers have written consent of the landowner to place traps within 150 yards of a structure used as a residence, apply only to body gripping traps;
 - Match the zones of protection for the Sierra Nevada red fox and San Joaquin kit fox with their current ranges;
 - Add an exception to the prohibited use of conibear traps, deadfall traps, and snares within these zones to protect human health or safety, and;
 - Add a provision that bats may not be trapped and may only be excluded from structures during the period October through March, except to prevent property damage, or to protect human health or safety. This would be added due to public concern regarding the protection of bats as there are 11 bat species classed as Species of Special Concern.
- Extend the bobcat trapping season an additional 51 days. Existing Section 478, Title 14, provides a 69-day trapping season. Inclement weather typically restricts or prevents trapping activity during portions of this period. In an effort to offset trapping time lost during these events and to increase trapping opportunity, while assuring bobcat harvest levels remain well below allowable thresholds, the proposed regulation change expands the season to 121 days, and;
- Adjust the bobcat hunting season so that it opens on the second Saturday of October instead of October 15. Providing for seasons to open on Saturdays is consistent with Commission policy.

Language that was originally proposed for Subsection 465.5(g) stated that bats may not be trapped and may only be excluded from structures during the period October through March, except to prevent property damage, or to protect human health or safety. Revised language amends the times during which bats may be excluded from structures to the following: February 15 through April 15, and September 1 through October 15. Wording proposed previously was intended to reduce the likelihood that young bats would be left in structures to starve if the adults were excluded during the maternity season. The new language is intended to also protect bats that may be emerging temporarily from structures during the winter roosting period.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Veterans Memorial Building, 209 Surf Street, Morro Bay, California on August 27, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 25, 2004, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than August

27, 2004 at the hearing in Morro Bay, CA. All written comments must include the true name and mailing address of the commenter.

The regulations as proposed in ~~strikeout~~underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Jon D. Snellstrom at the preceding address or phone number. Jesse Garcia, Department of Fish and Game, phone (916) 445-3709, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Also, the Initial Statement of Reasons, as well as the notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Draft environmental documents associated with the proposed regulatory actions are made available for comment commencing June 18, 2004. Oral or written comments relevant to these documents will be received at the August 6, 2004, meeting in Bridgeport. Written comments on these documents may be submitted to the Commission office (address given herein) until 5:00 p.m., August 6, 2004. Draft environmental documents are available for review at the Commission office and at the Department of Fish and Game's headquarters office (same address as Commission). Copies of the documents are also available for review at the Department offices in Redding, Rancho Cordova, Yountville, Fresno, Bishop, Eureka, Menlo Park, Monterey, Chino and San Diego. **NO WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL DOCUMENTS WILL BE ACCEPTED AFTER 5:00 P.M. ON August 6, 2004.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

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) 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. These actions are proposed to provide maximum protection of wildlife and habitat, clarity to language and appropriate management for public use. These regulation changes are sufficiently minor that any economic impact, positive or negative, would not be significant.
- (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:

None

(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: None

(h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Robert R. Treanor
Executive Director

Dated: July 26, 2004