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

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203, 355, 3003.1, 3800, and 4150 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 355, 356, 2005, 2055, 3800, 3950, and 4150 of said Code, proposes to amend sections 353 and 475, Title 14, California Code of Regulations, relating to methods authorized for taking big game, nongame birds and nongame mammals.

Informative Digest/Policy Statement Overview

Amend Section 353, Title 14, CCR, Re: Methods Authorized for Taking Big Game

The existing regulations provide for methods to be used to take big game and traditionally, projectiles (bullets) containing lead have been used. The regulation changes proposed would require non-lead projectiles for big game hunting in the geographic area determined by the Fish and Game Commission to reduce risk of indirect lead toxicity to free-ranging California condors. Lead-alternative projectiles are primarily made of copper, and are considered effective for hunting and are not considered to be toxic to the California condor.

The proposal will allow the Fish and Game Commission to:

1. Establish the regulatory definition of projectile. A “projectile” is defined as any bullet, ball, sabot, slug, buckshot or other device which is expelled from a firearm through a barrel by the force of any explosion. For centerfire rifles, pistols, and revolvers, “projectile” is used to replace the term “bullet”. For muzzleloaders “projectile” is used to replace the terms “ball or bullet”. Projectile definition is given to improve consistency and clarity.

2. Establish a maximum threshold of allowable lead in a projectile to account for trace elements present in the projectile production process. The Commission will determine a maximum threshold based on input from ammunition manufacturers, scientists, and the public.

3. Establish the geographic area in which non-lead projectiles would be required for big game hunting. Options for geographic area are:

    a. Current California condor range as represented by the area shown in Figure 1. Based on information available to the Department, the condor currently inhabits these areas.

    b. Current and historical range as represented by deer hunt zones in Title 14, CCR, Section 360 as South A (Unit 110), D-7, D-8, D-9, D-10, D-11, and D-13 as shown in Figure 2. Based on information available to the Department, the condor does not currently inhabit areas of Zones D-7, D-8, or D-9.

    c. Statewide. Based on information available to the Department, the condor does not currently inhabit the entire State.

4. Establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm capable of firing the projectile while taking or attempting to take any big game.

Since the 1980s, State, federal, and non-profit organizations have diligently worked to save and reintroduce the endangered California condor into the wilds of its former range. These conservation efforts, including substantial research investigations, have resulted in the determination that lead toxicity/lead poisoning is a factor affecting condor health and survival. The Department mission is to conserve California's wildlife for use and enjoyment by the public. The intent of this regulation change is to reduce the risk to the condor from lead poisoning through big game hunting activities.

Amend Section 475, Title 14, CCR, Re: Methods of Take for Nongame Birds and Nongame Mammals

The existing regulations provide for methods to be used to take nongame birds and nongame mammals; and traditionally, projectiles (bullets) containing lead have been used. The regulation changes proposed would require "non-lead" projectiles for nongame bird and mammal hunting in the geographic area determined by the Fish and Game Commission to reduce risk of indirect lead toxicity to free-ranging California condors. An exemption to this requirement is proposed for .22 caliber or less rimfire cartridges, for which no non-lead alternative is available. Lead-alternative projectiles are primarily made of copper, and are considered effective for hunting and are not considered to be toxic to the California condor.

The proposal will allow the Fish and Game Commission to:

1. Establish the regulatory definition of projectile. A "projectile" is defined as any bullet, ball, sabot, slug, buckshot, shot, pellet or other device which is expelled from a firearm through a barrel by the force of any explosion.

2. Establish a maximum threshold of allowable lead in a projectile to account for trace elements present in the projectile production process. The Commission will determine a maximum threshold based on input from ammunition manufacturers, scientists, and the public.

3. Establish the geographic area in which non-lead projectiles would be required for nongame hunting. Options for geographic area are:

    a. Current California condor range. Based on information available to the Department, the condor currently inhabits these areas as shown in Figure 1.

    b. Current and historical range as represented by deer hunt zones in Title 14, CCR, Section 360 as South A (Unit 110), D-7, D-8, D-9, D-10, D-11, and D-13 as shown in Figure 2. Based on information available to the Department, the condor does not currently inhabit areas of Zones D-7, D-8, or D-9.

    c. Statewide. Based on information available to the Department, the condor does not currently inhabit the entire State.

4. Establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm capable of firing the projectile while taking or attempting to take any nongame species (exempting .22 caliber or less as described in proposed change #5 below).

5. Exempt .22 caliber or smaller, rimfire cartridges and their projectiles from the non-lead projectile requirement. These calibers would be exempted because there are no feasible non-lead alternatives. Nongame species killed with a .22 caliber or smaller are typically small mammals that are not considered a staple food source for condors to scavenge.

Since the 1980s, State, federal, and non-profit organizations have diligently worked to save and reintroduce the endangered California condor into the wilds of its former range. These conservation efforts, including substantial research investigations, have resulted in the determination that lead toxicity/lead poisoning is a factor affecting condor health and survival. The Department mission is to conserve California's wildlife for use and enjoyment by the public. The intent of this regulation change is to reduce the risk to the condor from lead poisoning through nongame bird and nongame mammal hunting activities.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the Crowne Plaza Cedar Room, 45 John Glenn Drive, Concord, California, on Friday, October 12, 2007 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the State Resources Auditorium, 1416 Ninth Street, First Floor, Sacramento, California, on Friday, November 2, 2007 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all actions relevant to this action at a hearing to be held at the Department of Education, State Board Room, 1430 N. Street, Room 1101, Sacramento, California, on Friday, December 7, 2007 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 November 30, 2007, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on December 4, 2007. All comments must be received no later than December 7, 2007, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

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, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Eric Loft, Wildlife Programs Branch, phone (916) 445-3555, 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. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

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 representative 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 the 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) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Department does not believe that the proposed action will have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Based on information currently available, the Department does not believe that requiring the use of non-lead ammunition or projectiles for the hunting of big game and nongame birds and mammals in California condor range will cause any significant changes to hunting programs administered by the Department or to the public.

(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:

Ammunition retailers not offering non-lead ammunition options will likely experience a reduction in sales and revenue. Those can be mitigated by including non-lead ammunition in their sales inventory. The demand for non-lead ammunition alternatives for a variety of purposes (enforcement, security, target practice) in addition to hunting is increasing.

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

Department research indicates that although the number of manufacturers currently producing non-lead ammunition is limited and the price of non-lead ammunition is higher in cost than lead ammunition, neither of these factors will result in significant adverse cost impact to California's big-game and nongame hunters:

The difference in price for a box (20 rounds) of non-lead ammunition compared to lead ammunition varies depending on caliber and ranges from $1.00 (2%) for 7mm caliber to $5.00 (22%) for .243 caliber.

Differences in non-lead bullet costs for reloading (50 bullets/box) ranged from $8.60 (37%) for .270 caliber to $11.04 (65%) for .224 caliber.

Although production may be limited at the present time, a variety of ammunition retailers do offer non-lead ammunition in most calibers used in big-game and nongame hunting.

When viewed as part of the total cost of a hunting trip however, (license, tags, food, lodging, fuel, carcass processing, taxidermy, etc.) the increased amount (up to $5.00 for a box of ammunition and up to $11.04 for a box of bullets) is not considered significant.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None. There has been some concern from the public that decreased hunting license sales would result, and in turn, decreased funding in federal funds available to the state through the Federal Aid in Wildlife Program (Pittman-Robertson Act). The Department of Fish and Game has no data to substantiate that this will happen, although a survey of hunters in Fall 2006 suggested some would not buy hunting licenses if this regulatory change were made.

(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 and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John Carlson, Jr.
Executive Director

Dated: September 25, 2007

Figure 1. Option 3a, proposed non-lead area for big game hunting.
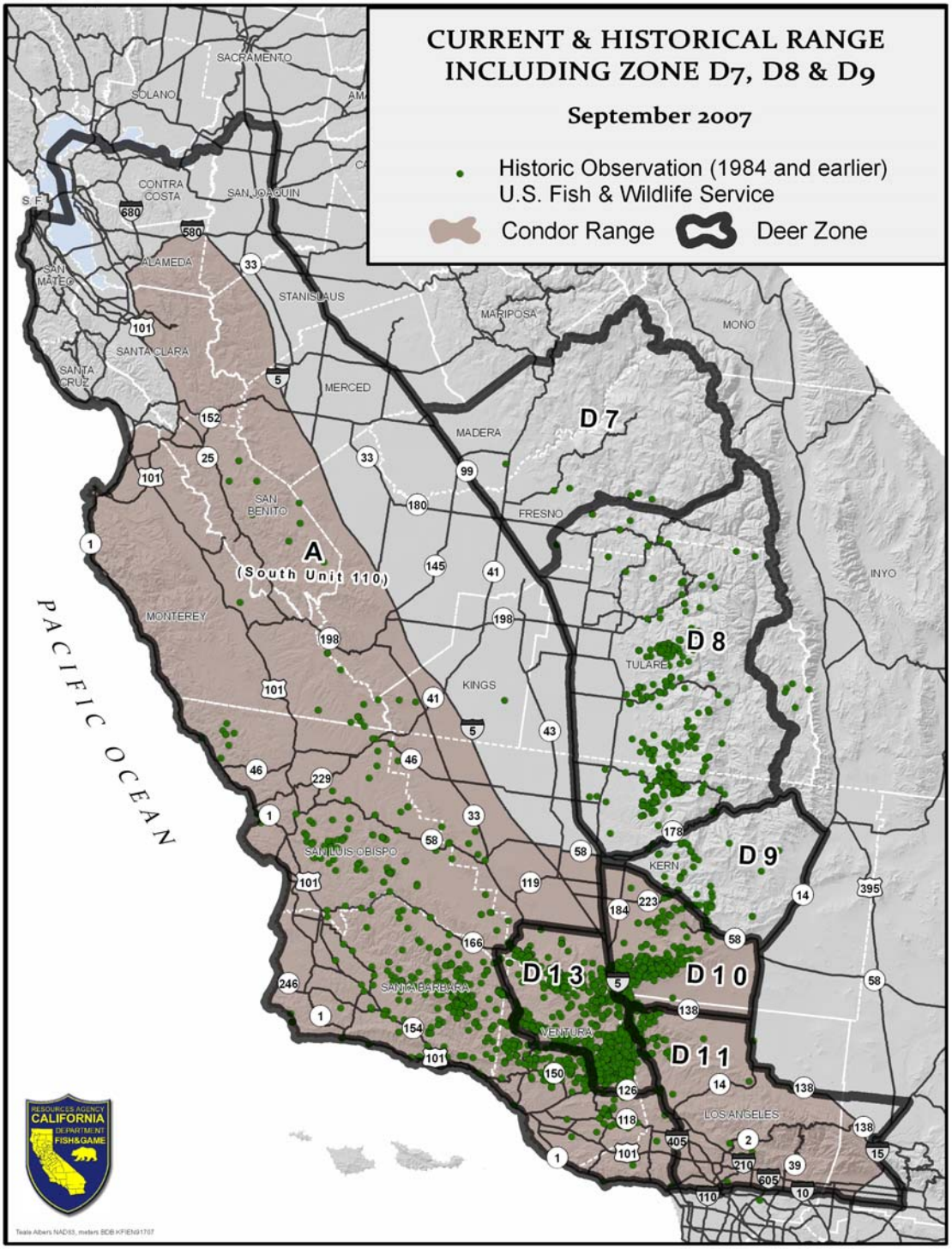
Figure 2. Option 3b, alternative non-lead area for big game hunting that illustrates deer zone boundaries for option 3b, overlaid on the proposed Option 3a area.