

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 300  
Title 14, California Code of Regulations (CCR)  
Re: Upland Game Birds

- I. Date of Initial Statement of Reasons: April 5, 2010
- II. Date of Amended Initial Statement of Reasons: June 29, 2010
- III. Date of Final Statement of Reasons: August 24, 2010
- IV. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: May 5, 2010  
Location: Stockton
  - (b) Discussion Hearing: Date: June 24, 2010  
Location: Folsom
  - (c) Adoption Hearing: Date: August 18, 2010  
Location: Sacramento

V. Update:

The Commission's June 18, 2010, notice provided options for the Commission to select the number of hunting permits issued for greater sage grouse in order to reduce any potential impacts hunting may have on the sage grouse populations in the sage grouse hunting zones. The proposed regulatory text provided a range for the number of permits for each zone as follows: East Lassen Zone 0-20 permits, Central Lassen Zone 0-15 permits, North Mono Zone 0-25 permits, South Mono Zone 0-35 permits.

The Commission's July 19, 2010 continuation notice stated that the Commission was considering reducing the number of permits in each zone to 0 to reduce any potential impact hunting may have on the sage grouse population in these zones.

In a memo received August 3, 2010, the Department notified the Commission that it had revised its recommendation.

The recommendation by the Department for 0 permits in all four hunt zones for sage-grouse was based largely on the 2010 "warranted, but precluded" finding for sage-grouse by the United States Fish and Wildlife Service (USFWS) under the Endangered Species Act (ESA). Upon further evaluation, the Department found that no states were

eliminating hunting based on the ESA finding and that the USFWS was even hunting on their own lands at the Sheldon National Wildlife Refuge in Nevada. Additionally, population surveys demonstrated significant increases in spring lek counts in 3 of the 4 hunt zones including North Mono, South Mono, and East Lassen. Therefore, the Department revised its recommendation and calculated permit recommendations based on lek counts in each hunt zone as in previous years. To be conservative, the Department did not recommend increases from 2009 even though some zones had substantial population increases. The Department initially recommended a decrease in Central Lassen from 15 to 5 permits, but further recommended 0 permits at the August 18 meeting to give the small population in this zone every opportunity to increase. Substantial reductions in permit numbers have been made in previous years in response to available science suggesting possible impacts from hunting and that substantial portions of sage-grouse range are closed to hunting. The hunted populations continue to be most stable whereas the areas that have been closed to hunting for many years continue to be most at threat because of habitat loss and degradation.

**On August 18, the Commission adopted no change for the North Mono, South Mono, and East Lassen zones, and 0 permits for the Central Lassen Zone. The following sage-grouse hunting permit numbers were adopted for 2010:**

**North Mono 25  
South Mono 35  
East Lassen 20  
Central Lassen 0**

**In addition, a non-substantive modification was made to the proposed regulatory language in the Amended Initial Statement of Reasons. Subsections 300(a)(1)(D)2., 300(a)(2)(D)2., and 300(a)(3)(F)2., inadvertently omitted the option for a zero bag limit.**

VI. Summary of Public Recommendations and Primary Considerations Raised in Support of and in Opposition to the Proposed Action and Reasons for Rejecting Those Considerations:

(a) Description of Proposed Action by Public: suggests continued hunting of sage-grouse based on available science and to allow .177 air rifles as a method of take for wild turkeys.

Proposal source: Bill Gaines, California Outdoor Heritage Alliance (oral comments on 5/5/10, 6/24/10, and 8/18/10).

Response: The comment was in support of the recommendation for sage-grouse hunting made by the Department and adopted by the Commission on 8/18/10. The Department did not recommend the air rifle recommendation because it did not have enough time to evaluate the proposal and determine whether it was

covered under the existing CEQA Document for Resident Game Bird Hunting, but it will be considered during the next regulation cycle.

- (b) Description of Proposed Action by Public: Recommends that hunting for sage-grouse be stopped because of change in status to a candidate species under the Endangered Species Act.

Proposal Source: Audubon California

Dan Taylor, Audubon California (letter to Commission 6/8/10)

Jordan Wellwood, Audubon California (oral comments on 6/24/10)

Dan Taylor, Audubon California (oral comments on 8/18/10)

Recommendation: Audubon California recommends closure of sage-grouse hunting based on recent finding by USFWS that sage-grouse are warranted for listing under ESA, but currently precluded by higher listing priorities, thereby making them a candidate species under ESA. They recognized that hunting has not driven the decline and indicated that other, habitat-based factors are the cause. They also indicated that fragmented populations are most at risk and that other states on the periphery of the range, including Washington and North Dakota, have closed hunting entirely. Although hunting is not the cause, Audubon California urged the Department and Commission to eliminate all controllable risks to the recovery of sage-grouse, including hunting to demonstrate to land managers the importance of conserving the species.

Response: Hunting was considered a relatively low risk to sage-grouse populations by the U.S. Fish and Wildlife Service in its March 5, 2010 finding. The primary causes of sage-grouse decline include habitat loss, degradation, and fragmentation, and the threats to their continued existence are habitat-based. The USFWS did not suggest that any states stop hunting as a result of their decision. In California, sage-grouse hunting is managed under a highly conservative permit system based on lek counts in the spring. The Department and Commission have reduced permit numbers in previous years in response to available science suggesting possible impacts from hunting. The Commission adopted the 0 permit recommendation in 2010 for Central Lassen where the population is small. Substantial portions of sage-grouse range are closed to hunting where populations are not productive. The hunted populations continue to be most stable whereas the areas that have been closed to hunting for many years continue to be most at threat because of habitat loss and degradation. Land management agencies are not prevented by the Department from managing habitat to improve conditions for sage grouse. Where sage grouse are hunted, the habitat is obviously in good condition as the populations have increased. Areas that are closed to hunting because of declining populations however, appear to continue their decline because of poor habitat management.

- (c) Description of Proposed Action by the Public: Concerned about eliminating hunting for sage-grouse entirely, urged the Department and Commission to

continue to issue permits commensurate with the population size, indicating that some other states have taken this approach.

Proposal Source: Tom Pederson, CA Rifle and Pistol Association (oral comments on 6/24/10 and 8/18/10)

Response: The comment was in support of the recommendation for sage-grouse hunting made by the Department and adopted by the Commission on 8/18/10.

- (d) Description of Proposed Action by Public: Recommended that the Department and Commission use science to support hunting where allowable, but protect the species.

Proposal Source: Ed Worley, National Rifle Association (oral comments on 6/24/10 and 8/18/10)

Response: The comment was in support of the recommendation for sage-grouse hunting made by the Department and adopted by the Commission on 8/18/10.

- (e) Description of Proposed Action by Public: wants to know why bag limits are different between Lassen and Mono Zones. Suggests 0 bag limit in North Mono because he has not seen any grouse this year.

Proposal Source: Wano Urbanos (email received 7/29/10)

Response: The 2-bird permits in Lassen and 1-bird in Mono are traditional and based on the recommendations of our local Regional offices. The 2-bird permits give fewer people more opportunity in Lassen and the 1-bird permits give more people opportunity in Mono, but with a 1-bird limit. However, in both cases, the Department determines the number of individual birds that can be taken not to exceed 5% of the projected fall population, based on extensive Spring lek counts. The Department counted a near record high number of sage-grouse on leks in the North Mono Zone this year than in the past decade, with 297 males, and they were within 2 birds of the count in the South Mono Zone with 299 males. There were more grouse in Mono County than in Lassen County this year, resulting from 3 years of favorable reproduction. However, the Department did not propose any increases in permits in Mono to be conservative and we recommended a decrease in Central Lassen, which is a small population.

- (f) Description of Proposed Action by Public: The Hunt Subcommittee of the Al Taucher Preserving Hunting and Sport Fishing Advisory Committee to the Commission expressed strong support for science-based management of all game species. Based upon current information the committee opposed any reduction in the number of sage grouse permits, except where best available science supports a reduction.

Proposal Source: Rich Fletcher, Committee Chairman, Al Taucher Preserving Hunting and Sport Fishing Advisory Committee to the Fish and Game Commission

Response: The comment was in support of the recommendation for sage-grouse hunting made by the Department and adopted by the Commission on 8/18/10.

- (g) Description of Proposed Action by Public: suggests the Department and Commission eliminate the permit system and restore a general season for sage-grouse open to all license holders.

Proposal source: Jeffrey Baird (email received 8/4/10)

Response: Because of scientific evidence that sage-grouse populations have been previously suppressed through hunting in Long Valley, CA, the Department instituted a permit system to closely control the amount of hunting mortality that each population can sustain. The Department recommends very conservative permit numbers based on spring lek count data each year to avoid any impacts to the growth of the population through hunting. Permit recommendations are less than 5% of the estimated fall population as supported in the scientific literature.

VII. Location and Index of Rulemaking File:

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

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Proposed Project

1) Reduce the number of permits. **The Commission reduced the number of permits in the Central Lassen Zone to 0 because of small population size.**

- (b) No Change Alternative:

1) The “no change” alternative would maintain the current number of permits issued for sage-grouse. **The Commission selected this alternative for the East Lassen, North Mono, and South Mono zones to maintain hunting opportunity where the populations can support it.**

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. 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 determinations regarding 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. The proposed regulation change is sufficiently minor that there would be no significant economic impact to businesses.

(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

## **Updated Informative Digest/Policy Statement Overview**

### 1. Sage-grouse hunting permits

The existing regulations provide a general hunting season for taking resident upland game birds. Subsection 300(a)(1)(D) provides for general season hunting of sage grouse in Lassen, Mono and Inyo counties. A limited number of permits are issued annually based on spring population surveys. The United States Fish and Wildlife Service recently determined that sage-grouse are warranted for listing under the Endangered Species Act, but currently precluded by higher listing priorities. Habitat-based factors are considered the cause of the decline in sage-grouse, not hunting, and no states are eliminating hunting as a result of this change in status. In California, sage-grouse are hunted under a highly conservative permit system that controls the biologically allowable take. Despite significant increases in 2010 spring breeding populations in the East Lassen, North Mono, or South Mono hunt zones, the Department recommended no change in permit numbers to be conservative. The Department recommended that no (0) permits be issued for the Central Lassen Zone, to give that small population every opportunity to increase.

**On August 18, the Commission adopted no change for the North Mono, South Mono, and East Lassen zones, and 0 permits for the Central Lassen Zone. The following sage-grouse hunting permit numbers were adopted for 2010:**

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