

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

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203, 240, and 355, Fish and Game Code; and to implement, interpret or make specific sections 200, 202, 203, 203.1, 215, 220, 240, 355, and 356 of said Code, is proposing emergency action to amend subsection (a)(1)(D)4.a., of Section 300, Title 14, California Code of Regulations (CCR), relating to Upland Game Hunting, Sage-grouse permits.

Informative Digest/Policy Statement Overview

On August 12, 2012, a wildfire (Rush Fire) started from lightning strikes in the East Lassen Hunt Zone for sage-grouse. As of August 21, the fire had grown to over 285,000 acres and had burned a significant acreage of priority sage-grouse habitat in the East Lassen Hunt Zone. The fire was less than half contained and was expected to continue for at least several more days.

Much of the highest quality habitat that supports this Lassen County sage-grouse population for both the Central Lassen Hunt Zone and the East Lassen Hunt Zone has burned, including several of the most important lek (strutting/breeding) sites.

The U.S. Fish and Wildlife Service has identified the sage-grouse as a candidate species for listing under the Federal Endangered Species Act. Consequently, in the 11 western United States where there are sage-grouse populations, there is a collective, intensive scientific and policy level effort to identify the factors most affecting sage-grouse populations and work to implement conservation actions that will preclude the need to list sage-grouse in 2015. Wildfire and the resulting loss of sagebrush habitat is considered one of the top threats to sage grouse in the west.

Regulated hunting is not considered a cause of significant mortality for sage-grouse on an annual basis and under normal conditions because the states all take a conservative approach to the level of hunting authorized and use data-driven estimates of population trend.

Section 300(a)(1)(D)4. provides East Lassen Zone 20 permits and Central Lassen Zone 11 permits for the general sage-grouse season. Sage-grouse hunting has been authorized to start on September 8 for the two-day season (Sept. 8-9, 2012) in the East Lassen and Central Lassen zones.

Because of the uncertainty regarding the direct/indirect impact of the fire on the overall sage-grouse population in the East Lassen Zone, there is uncertainty whether the limited hunting proposed could have an impact on the population. At a minimum, we know that over 200,000 acres of sage-grouse habitat has been lost including key lek areas. In the face of this uncertainty, and due to the long-standing strategy of conservative management of the species in California, the Department is recommending action be taken to reduce the 2012 quota to 0 permits in the East Lassen Zone.

The Department does not recommend a change to the Central Lassen Zone at this date, but will plan to have more up to date assessment at the time of the hearing to provide a specific recommendation (to modify, or not, the quota for Central Lassen Zone) for the Commission.

The benefit of the proposal is for the conservation of the species.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate upland game hunting regulations.

Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate conservation, preservation or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

Public Comments on Proposed Emergency Regulations

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. Government Code Section 11346.1(a)(3) states that the agency is not required to provide the above notice if the emergency situation addressed by the regulation clearly poses such an immediate, serious harm that delaying action to allow notice and public comment would be inconsistent with the public interest. The Commission is exercising the authority under Section 11346.1(a)(3) in that this notice will not be available for the full five working day period. . After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:
None.

- (b) Nondiscretionary Costs/Savings to Local Agencies: None
None.
- (c) Programs Mandated on Local Agencies or School Districts:
None.
- (d) 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.
- (e) Effect on Housing Costs:
None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes 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.

FISH AND GAME COMMISSION

Dated: August 23, 2012

Sonke Mastrup
Executive Director