

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

Amend Section 401 and Repeal Section 480
Title 14, California Code of Regulations

Re: Depredation Permit Application and Form, and Bobcat Depredation

- I. Date of Initial Statement of Reasons: March 7, 2013
- II. Date of Pre-adoption Statement of Reasons: June 4, 2013
- III. Date of Final Statement of Reasons July 24, 2013
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: April 17, 2013
Location: Santa Rosa
 - (b) Discussion Hearing: Date: May 22, 2013
Location: Los Angeles
 - (c) Adoption Hearing: Date: June 26, 2013
Location: Sacramento
- V. Update: The Commission adopted the revised language of the Regulatory Text as described in the Pre-adoption Statement of Reasons:

Description of Modifications of Originally Proposed Language of Initial Statement of Reasons:

§401(b)(3): The original text has been changed to more clearly indicate that permits issued “authorizing the use of dogs for bear or bobcat shall authorize no more than three dogs.”

§401(b)(4)(J): The original text has been revised to require applicants to provide a statement of “why dogs are needed” in closer accord with the enacting statute (SB1221, 2012, Lieu) and Fish and Game Code Section 3960.2.

§401(d)(1): The original text has been changed to specifically require that permits issued to take depredating bear or bobcat with dogs “shall include conditions that comply with Fish and Game Code Section 3960.2.”

§401(g)(2): The original text has been revised with the addition of the word “shall” to make it clearer that permit holders must both comply with Fish and Game Code Section 3960.2 and submit a report to the Department.

Reasons for Modifications of Originally Proposed Language of Initial Statement of Reasons:

The proposed editorial changes to the original text are necessary to add clarity, specificity, and emphasis, which will improve the implementation of the enacting statute (SB1221, 2012, Lieu) and Fish and Game Code Section 3960.2. However, none of the proposed changes are substantive and do not alter the intent of the original text. These changes accommodate constructive public input received by the Commission during the 45 day notice period.

VI. Summary of Primary Considerations Raised in Support and in Opposition:

Responses to public comments received were included in the [Pre-Adoption Statement of Reasons \(see attached\)](#).

No other written comments have been received.

The Commission did receive the following oral public comments at the June 26, 2013 adoption hearing:

Virginia Handley indicated that there is agreement on the proposed language in these regulations. She added that she had a meeting regarding mountain lion depredation and predator agreements with the Director of Fish and Wildlife.

Response: Agreement noted for the Commission's minor editorial changes of the original text, which added clarity and specificity to the text. The proposed regulation is not applicable to the mountain lion meeting held with the Director of Fish and Wildlife. The take of mountain lion is regulated in § 402 "Issuance of Permits to Kill Mountain Lion Causing Damage" which is beyond the scope of this rulemaking.

Noelle Cremers, representing the California Farm Bureau Federation said there is a need for predator control on California's farms and ranches; and, while there is a need for tools to handle the predator problems, this is a new requirement for depredation permits for bobcat. She asked that the Department reach out to farmers and ranchers regarding the implementation of these changes to depredation permitting.

Response: This regulation will still authorize immediate take of bobcats found to be injuring or killing livestock, provided that the property owner or tenant applies for a permit the next working day. Law enforcement officers and other personnel are trained in the application of the regulations. Prior to issuing a depredation permit, Department personnel are required under §401(c) to collect information from the applicant including steps taken to "prevent future occurrence of the damage." The purpose of the requirements is to provide opportunity for interaction, instruction, and prevention. Department personnel can be made available, on request, to educate and inform members of the ranching community about predator management considerations.

Jennifer Fearing of the Humane Society of the United States said she appreciated the time everyone spent in addressing the concerns she raised.

Response: In response to Ms. Fearing's written comments made at the discussion meeting, the Commission made minor editorial changes, not altering the intent of the original text, which added clarity and specificity to the text.

Eric Mills thanked the Department for making the changes Jennifer Fearing recommended. He specifically asked that the Department consider changing the language of "permits for depredation shall be issued, to may be issued." He said he would now like to see the Department and Commission address his concerns regarding too many mountain lion and other predator killings under depredation permits.

Response: The proposed amendments to Section 401 do not specify that "permits for depredation shall be issued." The regulation actually states in §401(c)(1): "The department shall collect the following information before issuing a depredation permit:" When the Department has received all of the required information, including documentation of non-lethal measures taken prior to requesting the permit and corrective measures to be taken to prevent future damage, then the decision to issue a permit is made.

Fish and Game Code section 4181 does provide that the Department, "upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals...." The Department notes the commenter's concern with this statutory language.

The proposed regulation is not applicable to the take of mountain lions. The take of mountain lion is regulated in § 402 "Issuance of Permits to Kill Mountain Lion Causing Damage," which is beyond the scope of this rulemaking.

The Department strives to balance reasonable protection of property, limit take of wildlife, disseminate information to applicants about preventing depredation, and to collect information which will inform the Department about predator populations and future management needs.

There were no other speakers, and no other written comments submitted.

VII. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Wildlife
1812 Ninth Street
Sacramento, CA 95811

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

Section 401 specifies a single form (Form FG WPB 543) for authorizing the take of depredating wildlife. This form has not been updated since 2005; furthermore, no permit is currently required by the department for the take of depredating bobcat, and the regulation doesn't reflect recent changes to the FGC (SB 1221 (Lieu)). No other reasonable alternative to the proposed changes has been identified.

(b) No Change Alternative:

A no-change alternative to sections 401 and 480 was considered and rejected because these sections would be inconsistent with new statutory requirements in SB 1221(Lieu) (See Sections 3960, *et seq.*) regarding the take of bear or bobcat with the use of dogs.

(c) 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 the affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law 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 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.

(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 on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, the expansion of businesses in California, or benefits to worker safety.

The proposed changes in Section 401 and the repeal of Section 480 will not impact jobs and/or businesses in California. SB 1221(Lieu) (FGC Section 3960.2(d)) prohibits compensation of individuals involved with the depredation permit; therefore it is unlikely that any new business, or expansion, would be created. Existing businesses, for example dog breeders and trainers, are not reliant on providing dogs solely for the take of the listed depredators, therefore any potential impact on the creation or elimination of jobs within the State is negligible.

The general provisions of amended Section 401 provide for a means to control animals causing damage or destroying, or immediately threatening to damage or destroy land or property. These sections in turn may benefit the health and welfare of California residents by clarifying conditions under which depredating animals may be taken.

The Commission anticipates benefits to the environment by identifying non-lethal methods prior to the issuance of a depredation permit, preventative measures to avoid depredation in the future, and improved reporting of take following issuance of a permit.

(c) Cost Impacts on Private Persons:

The Fish and Game Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action. There is no cost or fee collected by the department for the permit. Additional effort may be associated with the reporting requirements of SB 1221 (Lieu), but these costs are expected to be minor.

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

None

(e) Other 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)

Section 401, Title 14, CCR, to be amended

Existing law provides that depredation permits may be issued by the Department of Fish and Wildlife (Department) for the purpose of protecting property being damaged by wildlife. Section 401 governs applications, issuance, and reporting requirements for depredation permits to take specific wildlife species, including bear, causing damage to property. The 2012 passage of SB 1221 (Lieu) placed limits on the use of dogs to pursue bear and bobcat, and specified additional requirements for those applicants issued a depredation permit allowing the use of dogs to pursue bear and bobcat. The Commission proposes to amend Section 401 to improve the collection of depredation permit information and to make this section consistent with the new statute.

The proposed action modifies the method of application and permit issuance for take of specified depredating mammals including bobcat, and of depredating bear and bobcat taken with the use of dogs. The amendments to Section 401(a) will now require property owners to obtain permits and report the take of bobcat. Bobcat “in the act” of killing livestock can still be taken immediately, provided only that a permit is requested by the next working day. While the Department doesn’t expect a large number of depredation permits to be requested for bobcat, since there is no existing permit required for depredating bobcat, the demand for this permit is unknown at this time. The proposed amendments will enhance consistency with the Fish and Game Code (FGC) and allow for the collection of information regarding bobcat depredation throughout the state.

The depredation form currently specified in subsection 401(c) as Form FG WPB 543 (new 5/05) is out of date and available only on paper. Rather than requiring use of a specific form, the Commission proposes to amend subsection 401(c) to allow the Department to collect information needed from the applicant for the purpose of determining the necessity of the permit. A form will no longer be specified within the regulations thereby giving the Department flexibility to adequately analyze applicant information and allow the department to issue site- and species-specific permits either electronically or on paper.

Language added to subsection 401(d)(1) will specify that steel-jawed leghold traps are prohibited in accordance with Section 3003.1 of the Fish and Game Code. Subsection 401(d)(1) will be further amended to delete the words “based upon safety considerations” in order to allow the department to consider additional factors when specifying the caliber and type of firearm and ammunition, archery equipment or crossbow used to take depredation animals. Additional factors may include effectiveness, humane treatment of wildlife, and minimizing threats to non-target wildlife.

The proposed amendment to subsection 401(f) would increase a violator’s prohibition period for obtaining depredation permits from 12 to 24 months to be more consistent with the terms of probation in cases involving the illegal take of mammals.

Section 401 will be further amended to specify reporting requirements and requiring the presentation of bear skulls to the Department for scientific analysis.

Section 480, Title 14, CCR, to be repealed.

Section 480 will be repealed since its provisions have either been superseded by SB1221 (Lieu) or will be replaced by the amended provisions of Section 401.

Non-monetary benefits to the public.

The Commission expects that proposed amendments and additions to the regulations concerning depredation will provide a non-monetary benefit by improving the monitoring and reporting of the take of wildlife under a depredation permit. The Commission does not anticipate significant non-monetary benefits to the protection of public health, worker safety, the prevention of discrimination, the promotion of fairness and social equity, or to the increase in openness and transparency in business and government.

Evaluation of incompatibility with existing regulations

The proposed regulations in this rulemaking action are neither inconsistent nor incompatible with existing state or federal regulations. The proposed amendments are needed to enhance clarity and to comply with the new statutory requirements of SB 1221 (Lieu, 2012).

Pre-adoption Statement of Reasons, Explanation of Changes to the Original Proposed Text of Section 401, Title 14, CCR.

The Commission received constructive written comments from the Humane Society of the United States identifying concerns about the original proposed text. These comments pointed to the fact that the proposed regulations did not fully cover some of the conditions imposed by the enacting statute in Fish and Game Code Section 3960.2.

Response: The non-duplication standard provided in Government Code Section 11349(f) generally discourages agencies from indiscriminately incorporating statutory language in regulations. The text of the California Code of Regulations (CCR) Title 14 is not intended, nor required, to repeat the provisions of the Fish and Game Code (FGC). The CCR make specific and implement the provisions of the FGC. The provisions of both the CCR and the FGC are equally and separately enforceable. In the interest of clarity and specificity, regulations may repeat or paraphrase some provisions of the FGC, which, if left out of the text, may be incomplete and not easily understood by the public. Therefore, the Commission has incorporated some of the clarity suggestions of the Humane Society into the proposed revisions to the original text. In other cases, rather than repeat or paraphrase the requirements of FGC Section 3960.2, the Commission has amended the text to make it clear that applicants of permits to take bear or bobcat with dogs must comply with this section of the code.

The changes proposed by the Commission in response to comments by the Humane Society of the United States have been deemed to be editorial, for the purpose of clarity, non-substantive, and not altering the meaning of the original proposed text.

Action taken by the Fish and Game Commission at the adoption hearing June 26, 2013:

The Commission adopted the revised language of the Regulatory Text as described in the Pre-adoption Statement of Reasons.