I. Date of Initial Statement of Reasons: March 7, 2013

II. 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

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

   1. The Department of Fish and Wildlife (department) is authorized to issue a wide variety of permits through the use of forms and to obtain pertinent information by both paper and electronic methods. To keep pace with information technology and improve service to the public, the department intends to continue to move towards more electronic means of collecting applicant information and issuing permits. Traditional hard copies and mail service will continue to be available to people without access to computer equipment and the internet.

   2. The existing regulations in Section 401 do not specify a depredation permit for bobcat. At this time, property owners may take bobcat without a depredation permit and are only required to report the take within 30 days as provided in Section 480. The lack of permits and lack of control over reporting make tracking (or other study) of the number of bobcat taken problematic.

   3. Bobcat is proposed to be added to subsection 401(a) to provide for a depredation permit to take bobcat consistent with the other species listed, which presently includes bear. This addition is necessary because in 2012 the California Legislature passed SB 1221(Lieu) amending
Section 3960.2 of the Fish and Game Code (FGC) providing that “not more than three dogs may be used to pursue bears or bobcats pursuant to a depredation permit issued by the department” with specified conditions.

Additionally, a provision in subsection 401(a) will be added to make it clear that a bobcat in the act of injuring or killing livestock may be taken immediately, provided the owner requests a depredation permit by the next working day. This language is consistent with FGC section 4152, which already allows for the take of nongame mammals such as bobcat when they are found to be injuring private property. It is also consistent with FGC provisions regarding other mammals such as wild pigs, bear, and mountain lions discovered “in the act” of damaging property. This new provision will continue to allow owners to protect their property but also will provide a method, not available today, for the department to investigate and provide information to the owner to prevent future bobcat depredation.

4. The permit periods in subsection 401(b) will be amended to clarify the existing duration of depredation permits (one year for beaver, wild pigs, or gray squirrels, and 60 days for bear, elk, wild turkey, or deer) and specify that bobcat depredation permits are generally valid for 60 days. However, consistent with SB 1221 (Lieu), the proposed regulation would provide that if dogs will be used to pursue bear or bobcat, the permit is valid for only 20 days.

5. Currently, subsection 401(c) requires permit applications to be made on form FG WPB 543 (new 5/05) entitled “PERMIT TO KILL DEER, BEAR, ELK, WILD PIG, GRAY SQUIRREL, BEAVER, WILD TURKEY, OR MOUNTAIN LION CAUSING CROP OR PROPERTY DAMAGE.” This form is available only in hard copy and by this action will be phased out to allow other methods of collecting information and issuing permits.

By specifying the necessary information for permit issuance rather than a specific application form, other amendments to subsection 401(c) will enable the department to issue site specific permits based on species specific and varied information through an electronic reporting system. The proposed amendments to subsection 401(c) are necessary to allow the department to collect the necessary data from the owners or tenants alleging property damage, to generate depredation permits, and to prepare reports that are required by existing statutes. In 2012 the California Legislature passed SB 1221 (Lieu) which amended Section 3960.2 of the Fish and Game Code providing that “not more than three dogs may be used to pursue bears or bobcats pursuant to a depredation permit issued by the department” with specified conditions. The new information to be collected will include the number (if any) of dogs to be used by the permittee and to collect information regarding the pursuit and take of bear and bobcat.
6. The purpose of adding “no steel-jawed leghold traps may be used to take mammals” in subsection 401(d)(1) is to ensure the regulation is consistent with the prohibition specified in Section 3003.1 of the Fish and Game Code and to promote compliance with this law.

The purpose of deleting the words “based upon safety considerations” in subdivision (d)(1) of Section 401 is intended to remove a limitation on the department’s discretion to specify the caliber or type of equipment that may be used to take a depredating animal. The existing regulation could be interpreted to only authorize the department to consider human safety considerations when the department specifies the caliber, type of firearm and ammunition, archery equipment, crossbow, or trap that may be used. While human safety is one important factor that must be considered, the department should consider other factors on a case by case basis when issuing depredation permits. For depredation permits authorizing the take of deer, the deleted language appears to conflict with the Fish and Game Code section 4181.5(b) requirement that the department consider several other factors. Other important factors may be the effectiveness of different kinds of devices, minimization of threats to non-targeted wildlife, the humane treatment of targeted wildlife, the potential for disturbance of other persons, wildlife, or resources, or other site-specific issues that may arise with respect to the take of a particular animal. By removing the limiting language in the existing regulation, the proposed amendment will broaden the factors the department may consider before specifying equipment that may be used to take a depredating animal.

7. The addition of language to subsection 401(e)(2) regarding dog handlers, along with the proposed amendments in subsection 401(c)(1)(C), is intended to implement a provision of SB 1221 (Lieu) requiring the name and address of dog handlers to be included in permits authorizing the use of dogs to take bear or bobcat. (See FGC Section 3960.2(b)(5).)

8. The existing subsection 401(f) prohibits persons convicted of certain wildlife violations in the past 12 months from taking animals pursuant to a depredation permit. The proposed amendment would increase this period to 24 months. This change is more consistent with the duration of probation sentences/conditions typically ordered in the adjudication of cases involving illegal take of mammals.

9. Subsection 401(g) is amended to add reporting requirements for take of depredating bear or bobcat with the use of dogs in accordance with the provisions of SB1221(Lieu). FGC 3960.2(e) specifies the reporting requirement as 30 days following the issuance of the depredation permit.

10. Subsection 401(i) is amended to require the skulls of bear taken under a depredation permit to be submitted to the department for scientific purposes as specified in SB1221(Lieu). Teeth removed from bears are examined by the department to determine the age and other information...
about the animal in accordance with the department’s Black Bear Management Plan.

11. Section 480, Bobcat Depredation, is to be repealed since its provisions have either been superseded by SB1221 (Lieu) or replaced by the proposed amendments to Section 401.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority cited: Sections 200, 202, 1050, 3960.2, 4150, 4181, and 4181.5, Fish and Game Code.
Reference: Sections 3003.1, 3960, 3960.2, 4150, 4152, 4181, and 4181.5, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

Although it is not required by the proposed regulations, the Commission anticipates development of new software by the department’s Information Technology Branch for the department’s use in both collecting applicant information and issuing depredation permits to members of the public.

(d) Identification of Reports or Documents Supporting Regulation Change:

SB 1221 (Lieu). Mammals: Unlawful to use dogs to pursue bears and bobcats. (9/26/2012)

Economic Impact Analysis

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are scheduled prior to the notice publication. The 45-day comment period provides adequate time for public review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Proposed Project

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 or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed amendments would implement SB 1221(Lieu), and they are not expected to result in impacts to the environment, therefore, no mitigation measures are needed.

VI. 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 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
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, 2012) 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).