

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, 1050, 3960.2, 4150, 4181, and 4181.5, Fish and reference sections 3003.1, 3960, 3960.2, 4150, 4152, 4181, and 4181.5, Fish and Game Code; proposes to Amend Section 401 and Repeal Section 480, Title 14, California Code of Regulations (CCR), relating to Depredation Permit Application and Bobcat Depredation.

Informative Digests/Policy Statement Overview

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The depredation form currently specified in subsection 401(c) as Form FG WPB 543 (new 5/05) is out of date and available only on paper.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).

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 a hearing to be held in University of California Los Angeles (UCLA), De Neve Plaza Building, 351 Charles E. Young Drive – West, Los Angeles, California, on Wednesday, May 22, 2013 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 options relevant to this action at a hearing to be held at the Department of Consumer Affairs, 1747 North Market Boulevard, Sacramento, California, on Wednesday, June 26, 2013 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 June 21, 2013 to be included in the Commissioners' briefing materials, 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 12:00 noon on June 25, 2013 to be delivered by staff to the meeting; or be presented to Commission staff at the meeting no later than the agenda item is heard on June 26, 2013, 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 all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, 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 Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Mr. Michael Randall, Regulations Unit, Department of Fish and Game, telephone (916) 653-4678, 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/Results of the Economic Impact Analysis

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

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

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: April 23, 2013