

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-adoption Statement of Reasons)

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

Re: Depredation Permit Application and Form, and Bobcat Depredation
Changes to the Proposed Regulations in Response to Public Comments

- I. Date of Initial Statement of Reasons: March 7, 2013
- II. Date of Pre-adoption Statement of Reasons: June 4, 2013
- III. 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
- IV. Description of Modifications of Originally Proposed Language of Initial Statement of Reasons:

The Department is recommending the following clarity changes to the text in response to public testimony. The changes are described as follows:

§401(b)(3): The originally proposed text has been reordered 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 amended to ensure Fish and Game Code subsection 3960.2(b)(2) is satisfied when application is made for the use of dogs in pursuit of bear or bobcat. The applicant, when requesting the use of dogs must provide the number of dogs that will be used to pursue or take bear or bobcat, pursuant to FGC and enacting statute (SB1221, 2012, Lieu).

§401(d)(1): The original text has been amended to include the statement “shall include conditions that comply with Fish and Game Code Section 3960.2.” This will make this subsection more consistent in that specific references to Fish and Game Code for other conditions were already present in this subsection.

§401(g)(2): A clarification to this subsection was made with the addition of the word “shall” to make it clear that permit holders must both comply with Fish and Game Code Section 3960.2 and submit a report to the Department.

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

The proposed clarity changes to the original text are necessary to add consistency, 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:

Jennifer Fearing, on behalf of the Humane Society of the United States, May 22, 2013.

The Department received constructive comments from the Humane Society identifying concerns about the proposed original 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.

Department 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 Department has incorporated some of the editorial 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 Department 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.

No other comments have been received.

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 Department received constructive 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.

Department 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 Department 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 Department 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.

These changes proposed by Jennifer Fearing and identified and presented by the Department have been deemed to be for the purpose of clarity, non-substantive, and not altering the meaning of the original proposed text but provide consistency, specificity and emphasis.

Section 401, Title 14, CCR is amended to read:

§401. Issuance of Permit to Take Animals Causing Damage.

(a) Application. A person who is a property owner or tenant may apply to the department for a permit to take elk, bear, beaver, bobcat, wild pigs, deer, wild turkeys, or gray squirrels that are damaging or destroying, or immediately threatening to damage or destroy, land or property. A bobcat in the act of injuring or killing livestock may be taken immediately provided the property owner or tenant applies for a permit from the department the next working day following the take.

(b) Permit Period. ~~Permits issued pursuant to this section shall be valid for a period not to exceed one year, except that permits for elk, bear, wild turkey, or deer shall not be valid for more than 60 days.~~

(1) Permits issued pursuant to this section for beaver, wild pigs, or gray squirrels shall be valid for a period not to exceed one year.

(2) Permits issued pursuant to this section for bobcat, elk, bear, wild turkey, or deer shall be valid for a period not to exceed 60 consecutive days.

(3) Permits issued pursuant to this section ~~authorizing the use of dogs for bear or bobcat shall authorize~~ ~~authorizing the use of not no more than three dogs and~~ shall be valid for a period not to exceed 20 consecutive days.

(4) Permits may be renewed if damage or threatened damage to land or property continues to exist.

~~(c) Form Required Information and Conditions of Permit. Applications shall be made on form entitled "PERMIT TO KILL DEER, BEAR, ELK, WILD PIG, GRAY SQUIRREL, BEAVER, WILD TURKEY, OR MOUNTAIN LION CAUSING CROP OR PROPERTY DAMAGE" (FG WPB 543 (new 5/05)).~~

(1) The department shall collect the following information before issuing a depredation permit:

(A) The name, mailing address, and contact information of the property owner, including telephone, facsimile, and email. If the owner is a business entity, contact information for the person acting on behalf of the business.

(B) The name, mailing address, and contact information of the tenant (if applicable), including telephone, facsimile, and email.

(C) The name, mailing address, and contact information of any dog handlers or agents as described in subdivision (e), including telephone, facsimile, and email.

(D) The county and address of the location of the damage caused by depredation, or the nearest landmark or cross streets.

(E) A full description of the land or property damaged, destroyed, or immediately threatened, and the date the damage or threat occurred.

(F) The species suspected of damaging, destroying, or threatening land or property, and the method of identifying the species.

(G) A description of all non-lethal or less-lethal measures undertaken to prevent damage caused by animals prior to requesting the permit.

(H) A description of corrective actions that will be implemented to prevent future occurrence of the damage.

(I) The proposed method of take.

(J) Whether dogs will be used to pursue or take the animal, and if so, why dogs are needed, and the number of dogs to be used.

(2) The department may add terms and conditions to the permit necessary to protect wildlife and ensure public safety. To be valid, the permit shall contain a statement signed by the applicant that he/she has read, understands, and agrees to be bound by all the terms of the permit.

(d) Methods of Take.

(1) Animals taken pursuant to a permit may be taken in any legal manner except as herein provided and in accordance with the provisions of Section 465.5 of these regulations. Permits to take deer shall include conditions that comply with Fish and Game Code section 4181.5. Permits to take bear and bobcat with dogs shall include conditions that comply with Fish and Game Code Section 3960.2. No steel-jawed leghold traps may be used to take mammals, and no iron-jawed or any type of metal-jawed traps may be used to take squirrels or bears. No poison may be used. The department may specify the caliber and type of firearm and ammunition, archery equipment or crossbow to be used based upon safety considerations. The department may require that a permittee take animals alive by the use of live traps.

(2) The permittee and/or agent shall ensure that all animals are killed in a humane manner instantly and prevent any injured animal from escaping.

(e) Government Employees and Designated Agents.

(1) An employee of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resource reclamation, while acting in his/her official capacity may take depredating animals on the property designated in a permit issued pursuant to this section.

(2) The permittee may designate up to three other persons, including any dog handler who will be utilized in any pursuit, as his/her agents to take animals under the terms of the permit. A designated agent shall be any person who is acting under the direction and control of the permittee and who is 21 years of age or older. The designated agent(s) shall be named on the permit. The permittee may substitute designated agents with prior written approval of the department.

(f) Persons Prohibited from Taking Animals. No person ~~may~~ shall take animals pursuant to the permit if he/she has been convicted of a violation related to the take or possession of game or furbearing mammals in the past ~~42~~ 24 months or if he/she is on probation and may not hunt or possess a firearm as part of the terms of probation. A landowner who is on probation and may not hunt or possess a firearm as part of the terms of probation ~~must~~ shall designate a qualified agent to take animals under a permit.

(g) ~~Written Report Required for Wild Pigs. The permittee~~ Reports Required.

(1) Holders of permits authorizing take of wild pigs shall provide a report listing the date and sex of each wild pig taken. A report shall be submitted whether or not any animals were taken. The reporting period shall be by calendar month. The permittee or designated agent shall complete and ~~mail~~ submit the report to the department on or before the 15th day of the following month. Reports shall be ~~mailed~~ submitted to the address provided by the department.

(2) Holders of permits authorizing the use of dogs to take bear or bobcat shall comply with the requirements of Fish & Game Code section 3960.2 and shall submit a report to the department within 30 days of permit issuance. Reports shall be submitted to the address provided by the department. Reports shall include the following information:

(A) Date of kill and the sex of any bear or bobcat that was killed.

(B) Details regarding all pursuits, including any information about a pursued bear or bobcat, even if the animal was not killed.

(C) An explanation of why any pursued bear or bobcat was not killed, and whether such bear or bobcat was harmed.

(h) Tagging Animals. All animals taken pursuant to a permit, except wild pigs, shall be immediately tagged with tags provided by the department. Wild pigs shall be tagged prior to being transported from the property designated in the permit. Tags for animals except wild pigs shall be completed at the time the animal is taken. Tags for wild pigs shall be completed before the wild pigs are removed from the property. Tags shall clearly show the permittee's name, address, date and location the animal was taken and shall include the signature of the person taking the animal. The report portion of each tag shall be mailed to the department without delay. No tags are required for squirrels and or beavers.

(i) Utilization of Carcass. Animals taken pursuant to this permit must be disposed of as required in the permit. No animals, except wild pigs, may be utilized by the permittee or designated agent. The permittee or designated agent may leave the carcass of any wild pig where it was taken for reasons of high air temperatures, disease, parasites, or conditions which preclude use of the carcass. A person who makes every reasonable attempt to utilize the carcass of any wild pig as required in this subsection shall be deemed to be in compliance with Section 4304 of the Fish and Game Code.

(1) After any taking of bear, the permittee or agent shall comply with Section 367.5 of these regulations, except the skull shall not be returned to the permittee or agent.

(j) Suspension and Revocation of Permits.

(1) Permits may be suspended temporarily by the director for a breach or violation of the permit by the holders thereof, their agents, servants, employees or any person acting under their direction and control. The commission shall be notified of any such suspension and subsequently may revoke or reinstate the permit, or fix the period of its suspension, after written notice to the permittee and the permittee has been afforded an opportunity to be heard.

(2) Any person who has had his/her permit revoked or suspended by the commission shall be required, upon application for a new or subsequent permit, to appear before the commission and demonstrate to its satisfaction that the use of such a permit will be consistent with depredation control, with these regulations, and with the laws under which they are promulgated.

(k) It is unlawful for a permittee or agent to violate any of the terms or conditions of a permit issued pursuant to this section.

(l) The permit does not invalidate any city, county, or state firearm regulation.

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

Section 480, Title 14, CCR is repealed

~~§480. Bobcat Depredation.~~

~~Any person taking a depredating bobcat pursuant to the provisions of Fish and Game Code Section 3003.1 and Section 465.5 of these regulations, shall notify the department within thirty days from the date any bobcat is taken.~~

~~Note: Authority cited: Sections 3003.1 and 4150, Fish and Game Code. Reference: Sections 3003.1 and 4150, Fish and Game Code.~~