

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, 203, 355, 710, 710.5, 710.7, 713, 1002, 1050, 1053, 1526, 1528, 1530, 1580, 1581, 1583, 1745, 1761, 1764, 1765, 1907, 2118, 2120, 2122, 2150, 2150.2, 2157, 2190, and 10504 of the Fish and Game Code and to implement, interpret or make specific sections 355, 711, 713, 1050, 1053, 1055.3, 1526, 1528, 1530, 1570, 1571, 1572, 1580, 1581, 1582, 1583, 1584, 1585, 1590, 1591, 1764, 1765, 2006, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2157, 2190, 2193, 2271, 10504, 12000, and 12002 of the Fish and Game Code, Section 14998, Government Code, sections 5003 and 5010, Public Resources Code, and sections 25455, 26150, and 26155, Penal Code, proposes to amend sections 550, 551, 552, 630 and 703, add Section 550.5 and repeal Section 553, Title 14, California Code of Regulations, relating to Public Use of Department of Fish and Game Lands.

Informative Digest/Policy Statement Overview

California Wildlife Areas and Ecological Reserves

The majority of acreage administered by the Department of Fish and Wildlife (Department) is included in either wildlife areas or ecological reserves. Wildlife areas are acquired primarily for wildlife conservation and providing opportunities for compatible recreational uses. There are currently 110 wildlife areas, encompassing approximately 711,726 acres. The authority for regulating wildlife areas is established in Fish and Game Code sections 1525 through 1530.

Ecological reserves are acquired primarily for the purpose of protecting rare and/or endangered native plant and animal species and specialized habitat types (Fish and Game Code Section 1580). Other purposes for the establishment of ecological reserves are the observation of native plants and animals by the general public and scientific research (Fish and Game Code Section 1584). There are currently 130 ecological reserve properties, encompassing approximately 212,640 acres. The authority for regulating ecological reserves is established in Fish and Game Code sections 1580 and 1584.

The Department also administers public access lands and properties which are not yet designated. The latter are typically properties that have been recently acquired but have not yet been designated as either wildlife areas or ecological reserves by the Fish and Game Commission (Commission).

Fish and Game Code Section 1745 describes the priority public uses for Department-managed lands as "hunting, fishing, wildlife viewing, wildlife photography, conservation education, and fish and wildlife research, except for ecological reserves where uses shall be considered on an individual basis."

Purpose of Amendments to Wildlife Area and Ecological Reserve Regulations

- (1) Currently public uses of Department lands are governed by sections 550, 551, 552, 553, and 630, Title 14, Code of Regulations (CCR). Cumulatively these sections contain hundreds of subsections with both general regulations (applicable to all or most lands) and specific regulations (applying only to one or a limited number of areas), mixed together in an often confusing and hard to find manner. Furthermore there are inconsistencies, duplication, and unnecessary regulations which need resolution.

- (2) This rulemaking action is being proposed to accomplish the following objectives:
- Consolidate and improve the consistency and clarity of the regulations that govern public use of lands owned and/or managed by the Department of Fish and Wildlife, and remove existing regulations that are duplicative or unnecessary.
 - Clarify that restrictions on firearms on Department land do not prohibit the lawful possession of a concealed firearm by an active peace officer, a retired peace officer in lawful possession of an identification certificate issued pursuant to Penal Code Section 25455, or the lawful possession of a concealed firearm pursuant to a concealed carry permit issued pursuant to Penal Code sections 26150 or 26155.
 - Improve public safety and recreational opportunities without causing a significant effect on wildlife or habitat resources.
 - Standardize the process used to issue special use permits for activities on Department land. Fees associated with Special Use Permits are proposed in Section 703(a), Title 14, CCR.
- (3) To accomplish these objectives, the Commission proposes to amend and re-order these sections, and to add a new section, so that the public can more easily determine what uses are allowed upon which lands:
- General regulations that apply to all, or most, Department lands will be found in amended Section 550, Title 14, CCR.
 - The addition of Section 550.5, Title 14, CCR, within this rulemaking action contains detailed information regarding entry permits, reservations and special use permits for Department lands.
 - Specific regulations that pertain to Department lands designated as wildlife areas will be found in amended Section 551, Title 14, CCR. (Note that the current provisions of Section 553, Heenan Lake Wildlife Area, will be incorporated within Section 551. Section 553, Title 14, CCR, will therefore be repealed).
 - Specific regulations for the nine National Wildlife Refuges that have also been designated as wildlife areas by the Commission will be found in amended Section 552, Title 14, CCR.
 - Property-specific regulations for lands designated as ecological reserves will be found in amended Section 630, Title 14, CCR.
 - Subsection 703(a)(2) is a new regulation within this rulemaking action which includes fees for special use permits and incorporates by reference "Permit Application for Special Use of Department Lands" (DFW 730, New 08/13).
- (4) AMEND SECTION 550, Title 14, CCR. This rulemaking proposes the consolidation of generally applicable land regulations within an amended Section 550, Title 14, CCR. The most significant step in the proposed regulations is the combining of general regulations contained in the current sections 550, 551, and 630 into one set of regulations generally applicable to all Department lands as proposed in the new Section 550. These general regulations are for the protection of lands and natural resources.

Additionally, some regulations lack the information necessary to be as clear and understandable as possible. Language was changed or added in many subsections to improve the clarity of the regulations. Also 15 terms are defined in subsection 550(b) for the purpose of improving clarity. Subjects which were a particular focus in the effort to clarify the regulations included, but were not limited to: hunting, fishing, education,

research, photography, and wildlife viewing.

- (5) ADD SECTION 550.5, Title 14, CCR. Requirements for reservations, entry permits, fees, passes, and special use permits will be moved to, or provided in, new Section 550.5, Title 14, CCR.

As the amended Section 550 will address the basic, general regulations for public use, a new added Section 550.5 will address detailed topics. These include the “how to” details and specific requirements for entry permits and passes; hunting area reservations, including moving those currently found in Section 551; and, special use permits. The proposed Section 550 will direct readers to appropriate subsections of Section 550.5 to obtain more details where necessary. The necessity for new regulations regarding entry permits, fees, passes and special use permits is summarized below:

550.5(b), Title 14, CCR: Reservations for Wildlife Viewing and Tours. The observation of native wildlife and habitats by the public is an appropriate use of many Department lands (Fish and Game Code Sections 1528, 1584, 1745). Certain properties have become very popular for wildlife or wildflower viewing opportunities. The new regulation establishes advance reservation opportunities if it is necessary to limit entry to these areas to protect sensitive natural resources.

550.5(c), Title 14, CCR: Entry Permits, Fees and Passes. This section is necessary for clarification about how to obtain passes that are exchanged for entry permits at Department lands. The Commission is authorized to prescribe the terms for issuing permits and other entitlements to use Department lands in Fish and Game Code Section 1050.

550.5(d), Title 14, CCR: Special Use Permits. Proposed subsection 550(d) explains that Special Use Permits are required for organized events or gatherings on Department lands. There currently are no statewide procedures for making or processing requests for Special Use Permits. There is also no mechanism for the Department to recover costs incurred by processing requests for Special Use permits. Section 550.5 is proposed to fulfill the need to have statewide methods for requesting and processing Special Use Permits for Department lands and also to explain new associated fees associated with Special Use Permits.

- (6) AMEND SECTION 551, Title 14, CCR. Specific regulations for individual wildlife areas are proposed in amended Section 551, Title 14, CCR.

In the existing regulations specific regulations for wildlife areas are listed by property and not by type of use. If a person is interested in a particular type of use it is necessary to read the regulations for every wildlife area to learn where that use is allowed or where use restrictions exist. To make it easier for readers to find regulations regarding a use, the property-specific regulations for wildlife areas have been reorganized within the amended Section 551, primarily by type of use and secondarily by property. For most uses, the property-specific regulations are organized into tables, with each table dedicated to one or two types of uses. New regulations regarding visitor hours, hunter safety, firearms, dogs, and other restrictions are also proposed in this section to improve public safety.

Designation of a New Wildlife Area

The Department designates recently acquired lands described as wildlife areas in accordance with Fish and Game Code Sections 1525 and 1526. The list of all Department lands designated wildlife areas are included in the proposed amendment to subsection 551(b) and all future acquired wildlife areas will be added there. The property proposed at this time for designation in subsection 551(b)(8) is Burcham and Wheeler Flats Wildlife Area, Mono County.

- (7) AMEND SECTION 552, Title 14, CCR. Specific regulations for National Wildlife Refuges that are also designated as wildlife areas by the Commission are proposed in amended Section 552, Title 14, CCR.

All of the regulations in proposed subsection 552(a)(1) through 552(a)(5) correspond to the same numbered regulations in existing subsection 552(a). Following proposed subsection 552(a)(5), we inserted the regulations for the Sacramento River National Wildlife Refuge as subsection 552(a)(6). The regulations that are currently subsections 552(a)(6) through 552(a)(8) are proposed to be renumbered as 552(a)(7) through 552(a)(9). The regulations for the Sacramento River National Wildlife Refuge (SRNWR) were moved from subsection 551(q)(34) to subsection 552(a)(6) in order to consolidate into one location, all of the site-specific regulations for National Wildlife Refuges that are also wildlife areas that have been designated by the Commission. Existing subsection 552(a)(9) is proposed for deletion because the Department no longer manages the hunting program for the subject refuge (Stone Lakes National Wildlife Refuge), nor does the Department have any other management authority or responsibility for that refuge.

As previously discussed in more detail under Proposed Section 552, the language regarding camping in proposed subsections 552(a)(1)(D), (2)(E), (5E), and (9)(D) has been changed from the corresponding existing regulations ((552)(a)(1)(D),(2)(D),(5)(E), and (8)(E)). The existing subsections do not allow for any camping or tents on the subject refuges. This conflicts with the federal regulations (50 CFR 32.24, October 1, 2012) which allows "overnight" camping (meaning one night) on the nights before waterfowl shoot days, but only in campers, motorhomes or trailers and only in the hunter check-station parking area. The proposed changes eliminate the conflicts with both the federal regulations, and also with the decades-long practice of allowing camping under these restricted circumstances for the subject refuges.

- (8) REPEAL SECTION 553, Title 14, CCR, Heenan Lake Wildlife Area. As part of consolidating the regulations, all of Section 553 is proposed for deletion. Existing Section 553 includes site specific fishing and boating regulations for a single property, Heenan Lake Wildlife Area. These regulations are proposed to be incorporated into proposed subsection 551(l) which, when adopted, will also include property-specific regulations regarding boating.
- (9) AMEND SECTION 630, Title 14, CCR. Specific regulations pertaining to individual ecological reserves are proposed in amended Section 630, Title 14, CCR.

In the existing regulations specific regulations for ecological reserves are listed by property and not by type of use. If a person is interested in a particular type of use it is necessary to read the regulations for every ecological reserve to learn where that use is allowed or

where use restrictions exist. To make it easier for readers to find regulations regarding a use, the property-specific regulations for ecological reserves have been reorganized within the amended Section 630, primarily by type of use and secondarily by property. For most uses, the property-specific regulations are organized into tables, with each table dedicated to one or two types of uses. New regulations are also proposed to improve public safety.

Existing regulations in Section 630 give authority to the Department, partner agencies or organizations, to conduct management actions on ecological reserves. Because the Department already has statutory authority for these activities, these existing regulations are duplicative and unnecessary and have therefore been proposed for deletion.

Designation of Six New Ecological Reserves

The Department proposes designations of recently acquired lands described as ecological reserves in accordance with Fish and Game Code Section 1580. Ecological reserves will continue to be designated through addition to existing subsection 630(b), Title 14, CCR, under the proposed regulations. The properties proposed for designation as ecological reserves include:

- Subsection 630(b)(8), Bakersfield Cactus Ecological Reserve, Kern County
- Subsection 630(b)(30), Cambria Pines Ecological Reserve, San Luis Obispo County
- Subsection 630(b)(69), Liberty Island Ecological Reserve, Solano County
- Subsection 630(b)(106), San Antonio Valley Ecological Reserve, Santa Clara County
- Subsection 630(b)(114), Sands Meadow Ecological Reserve, Tuolumne County
- Subsection 630(b)(130), Vernalis Ecological Reserve, San Joaquin County

- (10) AMEND SECTION 703(a), Title 14, CCR to add subsection 703(a)(2) Permits for Special Use of Department Lands. An application form for requesting a Special Use Permit is proposed to be incorporated by reference into Section 703(a). The title of the application is "Permit Application for Special Use of Department Lands" (Form DFW 730 (New 08/13)). This application is referred to in proposed subsection 550.5(d), which when adopted, will provide regulations regarding the process for obtaining a Special Use Permit. The application included attachments that provide information about Special Use Permits, standard terms and conditions, and a supplementary form for commercial or fund-raising events.

Section 703(a) also includes the fees that would be associated with Special Use Permits. The fees are proposed to recover Department costs of evaluation and processing special use permit applications.

Benefits of the Regulation

The proposed regulations will make it easier for the public to understand and follow the rules that apply to Department lands. The Department also anticipates non-monetary benefits to public safety as a result of the changes to regulations proposed in this rulemaking. Proposed amendments to Section 552 will resolve existing conflicts with federal regulations on National Wildlife Refuges that are also designated as wildlife areas by the Commission.

Consistency and Compatibility with Existing State Regulations

After conducting a review for any related regulations, the agency has determined that these are the only regulations dealing with public use of California Department of Fish and Wildlife Lands. Therefore, the proposed regulations in this rulemaking action are neither inconsistent nor incompatible with existing state regulations. The primary purpose of the proposed regulations is a re-ordering and clarification of existing regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hilton San Diego Mission Valley, 901 Camino del Rio South, San Diego, California, on Wednesday, December 11, 2013, at 8:00 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, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, February 5, 2014, at 8:00 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 January 24, 2014 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 5:00 p.m. on February 1, 2014. All comments must be received no later than February 5, 2014 at the hearing in Sacramento. 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 environmental considerations and 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 Sheri Tiemann at the preceding address or phone number. **Dr. Eric Loft, Chief, Wildlife Branch, phone (916) 445-3555, 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 Business, 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. The proposed regulations are intended to clarify existing regulations and will not substantially change existing activities on Department lands.

- (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:

Because the proposed regulations will not substantially change existing activities on Department lands, the Commission does not anticipate any impact on the creation or elimination of jobs within the state, the creation or elimination of new or existing businesses, or the expansion of businesses in California. The Commission anticipates benefits to the welfare of California residents. The proposed regulations are intended to provide clarity for public use on Department of Fish and Wildlife Lands.

- (c) Cost Impacts on a Representative Private Person or Business:

Per proposed regulation subsection 550.5(d), Title 14, CCR, persons or organizations that apply for a special use permit would pay an appropriate permit fee based upon their proposed use. The proposed permit fee is \$122.50 for a Type 1 Special Use Permit, \$462.50 for a Type 2 Special Use Permit or \$536.00 for a Type 3 Special Use Permit. The permit fee recovers the Department's cost to review the permit application, coordinate with the applicant, develop terms and conditions, and issue the permit. An additional amount may be charged or a deposit may be required to recover other Department costs associated with a special use (e.g. site preparation, monitoring during the special use, clean up). Definitions of the types of special uses are in proposed subsection 550.5(d)(1), Title 14, CCR.

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

The reduction of duplication within the lands regulations is expected to reduce the number of pages in the regulation booklets which are published each year ("Hunting and Other Public Uses on State and Federal Areas"). This may save the state money in publishing costs. The state would recover the cost of regulating special uses or events on Department land through the special use permit fee.

The Commission does not anticipate any cost or savings in federal funding to the state.

- (e) 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, Government Code: 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 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: November 13, 2013