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2009 JUN 15 1 P 3: 10

CORRESPONDENCE NO. 2

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**JOHN CARLSON, JR.**  
EXECUTIVE DIRECTOR  
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fgc@fgc.ca.gov

STATE OF CALIFORNIA

## Fish and Game Commission

June 11, 2009

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 311.1 and 507.2, Title 14, California Code of Regulations, relating to methods authorized for taking resident small game and migratory upland game birds within the range of the California condor, which will be published in the California Regulatory Notice Register on June 12, 2009.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

**Dr. Eric Loft, Chief, Wildlife Branch, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

A handwritten signature in cursive script that reads "Sherrie Fonbuena".

Sherrie Fonbuena  
Associate Governmental Program Analyst

Attachment

**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 and 355 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 355, 2055, 3004.5, 3683, and 3950 of said Code, proposes to add sections 311.1 and 507.2, Title 14, California Code of Regulations, relating to methods authorized for taking resident small game and migratory upland game birds within the range of the California condor.

**Informative Digest/Policy Statement Overview**

**Section 311.1**

The existing regulations provide for methods to be used to take small game, including rabbits, squirrels and resident upland game birds. Traditionally, projectiles (bullets) containing lead and lead shot have been used. The regulation changes proposed as options would require non-lead projectiles for resident small game hunting in the geographic area determined by the Fish and Game Commission (Commission) to reduce risk of indirect lead toxicity to free-ranging California condors. Lead-alternative projectiles are considered effective for hunting and are not considered to be toxic to the California condor.

The proposal will allow the Commission to consider whether to establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take resident small game.

The proposed rulemaking is intended to provide the Commission with two options to consider in addition to the recommended "no change" option:

1. **Option #1:** establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take jackrabbits, varying hares, cottontail rabbits, brush rabbits, pigmy rabbits, and tree squirrels within the area described in 3004.5 of the Fish and Game Code; or
2. **Option #2:** establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take any resident small game species (the same species as in #1, plus resident game bird species) as defined in Title 14, CCR, Section 257, within the area described in 3004.5 of the Fish and Game Code.

The following species would be included in Option #2:

- jackrabbits and varying hares (genus *Lepus*);
- cottontail rabbits, brush rabbits, pigmy rabbits (genus *Sylvilagus*);
- tree squirrels (genus *Sciurus* and *Tamiasciurus*);
- Chinese spotted doves, Eurasian collared-doves, ringed turtle-doves, of the family Columbidae;
- California quail and varieties thereof;

- Gambel's or desert quail;
- mountain quail or varieties thereof;
- blue grouse and varieties thereof;
- ruffed grouse, sage grouse (sage hens), white tailed ptarmigan;
- Hungarian partridges, red-legged partridges, including the chukar and other varieties;
- Ring-necked pheasants and varieties
- Wild turkeys of the order Galliformes

Section 507.2

The existing regulations provide for methods to be used to take small game, including rabbits, squirrels; and resident and migratory upland game birds. Traditionally, projectiles containing lead and lead shot have been used. The regulation changes proposed as options would require non-lead projectiles for migratory upland game (common snipe, western mourning doves, white-winged doves and band-tailed pigeons) hunting in the geographic area described in Section 3004.5 of the Fish and Game Code (California Condor range) to reduce risk of indirect lead toxicity to free-ranging California condors. Lead-alternative projectiles are considered effective for hunting and are not considered to be toxic to the California condor.

The proposal will allow the Commission to consider whether to establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm, pellet gun, or air rifle capable of firing the projectile while taking or attempting to take migratory upland game birds.

The proposed rulemaking is intended to provide the Commission with an option to consider in addition to the recommended "no change" option:

Establish that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm capable of firing the projectile while taking or attempting to take migratory upland game birds defined in Section 3683 of the Fish and Game Code, [jacksnipe (common snipe), western mourning doves, white-winged doves and band-tailed pigeons], within the area described in 3004.5 of the Fish and Game Code.

**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 Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, June 25, 2009 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, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, 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 July 31, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 3, 2009. All comments must be received no later than August 6, 2009, at the hearing in Woodland, 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 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, John Carlson, Jr., 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 John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, 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

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:

Section 311.1: The proposal 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. While ammunition retailers may experience a reduction in sales, the impact is not expected to be significant because lead ammunition for hunting upland game would still be allowed in areas outside the condor range, and there would still be target shooting demands for lead ammunition in the condor range.

Section 507.2: 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. While ammunition retailers may experience a reduction in sales of lead projectiles, the impact is not expected to be

significant because non-lead projectiles for hunting migratory upland game birds are readily available and currently sold in the same stores.

- (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:

Section 311.1: Ammunition retailers not offering non-lead ammunition options will likely experience a reduction in sales and revenue. Those can be mitigated by including non-lead ammunition in their sales inventory. The demand for non-lead ammunition alternatives for a variety of purposes (enforcement, security, target practice) in addition to hunting is increasing.

Section 507.2: Most ammunition retailers currently offer non-lead (e.g. steel shot) ammunition options because it is required for taking waterfowl. Retailers can be expected to increase their non-lead ammunition in their sales inventory. The demand for non-lead ammunition alternatives for a variety of purposes (enforcement, security, target practice) in addition to hunting is increasing.

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

Section 311.1: Department inquiries indicate that although the number of manufacturers currently producing non-lead ammunition is limited and the price of non-lead ammunition is higher in cost than lead ammunition, neither of these factors will result in significant adverse cost impact to California's small-game hunters.

The requirement of non-lead ammunition for hunting of rabbits and squirrels within condor range will be an obstacle for some hunters. While non-lead shotgun ammunition is readily available, rifle ammunition typically used for small game mammals (.22 caliber) is just now coming into production, is likely to be unavailable for retail sale until sometime during 2009, and is anticipated to be more expensive.

Some upland game is taken with larger caliber ammunition. The difference in price for a box (20 rounds) of non-lead ammunition compared to lead ammunition varies depending on caliber. A popular caliber (.243 caliber) non-lead ammunition costs an additional \$5.00 (22%) per box, compared to lead. Reloading bullets are also more expensive. Non-lead bullets (50 per box) cost 65% more than lead for .224 caliber.

When viewed as part of the total cost of a hunting trip however, (license, tags, food, lodging, fuel, carcass processing, etc.) the additional cost is not likely to be significant.

Section 507.2: Department inquiries indicate that there are many manufacturers currently producing non-lead ammunition for taking migratory upland game birds. The price of non-lead ammunition is slightly higher in cost than lead ammunition. Steel shotshells cost 10 – 20% more than lead shotshells.

When viewed as part of the total cost of a hunting trip however, (license, food, fuel, etc.) the additional cost is not likely to be significant.

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

Sections 311.1 and 507.2: Minor costs of approximately \$20,000 per year for outreach materials, which will be absorbed in the Department's current budget.

There has been some concern from the public that decreased hunting license sales would result, and in turn, a decrease in Federal funding would be available to the state. The Department of Fish and Game has no data to substantiate that this will happen, although a survey of hunters in Fall 2006 suggested some would not buy hunting licenses if a regulatory change were made relative to hunting of big game.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

Sections 311.1 and 507.2: None.

- (f) Programs Mandated on Local Agencies or School Districts:

Sections 311.1 and 507.2: 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:

Sections 311.1 and 507.2: None.

- (h) Effect on Housing Costs:

Sections 311.1 and 507.2: 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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John Carlson, Jr.  
Executive Director

Dated: June 2, 2009

**COMMISSIONERS**  
**Cindy Gustafson**, President  
Tahoe City  
**Jim Kellogg**, Vice President  
Concord  
**Richard Rogers**, Member  
Carpinteria  
**Michael Sutton**, Member  
Monterey  
**Daniel W. Richards**, Member  
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Governor

CORRESPONDENCE NO. 2

Page 7 of 16  
**JOHN R. JONES JR.**  
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STATE OF CALIFORNIA  
**Fish and Game Commission**

2009 JUN 19 1 P 2 25  
BOARD OF SUPERVISORS

June 18, 2009

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 235.3, 236, 238, and 240, Title 14, California Code of Regulations, relating to Marking and Inspections of Live Fish Transportation Vehicles and Inspections of Aquaculture Facilities, which will be published in the California Regulatory Notice Register on June 19, 2009.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

**Mr. Neil Manji, Chief, Fisheries Branch, Department of Fish and Game, phone (916) 327-8840, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

A handwritten signature in black ink that reads "Anita Biedermann".

Anita Biedermann  
Associate Governmental Program Analyst

Attachment

**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 1006, 1050, 2118, 2120, 2301, 6400, 6401, 7701, 7708, 8040, 15004, 15005, 15102, 15200, 15202, 15400, 15600, and 15601 of the Fish and Game Code and to implement, interpret or make specific sections 17, 1006, 1050, 2116, 2116.5, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2125, 2127, 2150, 2150.1, 2150.2, 2150.4, 2150.5, 2151, 2152, 2153, 2155, 2156, 2185, 2186, 2187, 2189, 2190, 2192, 2193, 2270, 2270.5, 2271, 2272, 2301, 2348, 3201, 3202, 3203, 3204, 6400, 6401, 7700, 7701, 7702, 7702.1, 7703, 7704, 7705, 7706, 7707, 7708, 8040, 8371, 8431, 8435, 8436, 15004, 15005, 15200, 15202, 15400, 15401, 15402, 15403, 15404, 15405, 15406, 15406.5, 15406.7, 15407, 15408, 15409, 15410, 15411, 15412, 15413, 15414, 15415, and 15505 of said Code, proposes to add Section 235.3 and amend sections 236, 238, and 240, Title 14, California Code of Regulations, relating to Marking and Inspections of Live Fish Transportation Vehicles and Inspections of Aquaculture Facilities.

**Informative Digest/Policy Statement Overview**

Importation, intrastate transportation, and stocking of live aquatic plants and animals have the potential to impact California's wildlife resources and the State's aquaculture industry. Laws and regulations have been enacted to help ensure against the importation and/or spread of aquatic nuisance species and fish diseases that might damage State wildlife and industry resources. Importation, transportation, and stocking require Department of Fish and Game authorization and documentation to ensure that those activities will not cause damage. The current regulatory structure does not, however, require that transporting vehicles be marked to identify them as containing live fish nor does it provide specific methods to carry out inspection authorization found within the Fish and Game Code relating to aquaculture.

The proposed regulatory action would amend existing regulations governing importation and transportation to require that vehicles transporting live aquatic plants and animals be clearly marked with signs reading "LIVE FISH." Those same regulations would be clarified by specifically addressing the inspection of vehicles and businesses which may contain live aquatic plants and animals, including invasive species such as quagga mussels. The proposed amendment would exempt common carriers, seafood dealers, and the pet trade when their load is not primarily live fish. Requiring all such vehicles to be marked would be unreasonable and would create a counterproductive distraction for Department peace officers. The proposed amendment will better enable the Department to ensure compliance with existing law.

Better compliance will help ensure against damage to state wildlife and industry resources. More effective enforcement may also reduce the competitive advantage enjoyed by some illegal operators dealing with products desired in the marketplace but not allowed because of their potential resource impacts.

**Proposed Regulatory Changes**

For public notice purposes to facilitate Commission discussion, the Department is proposing the following changes to current regulations:

Section 235.3 will be added for the inspection of aquaculture facilities and permitted businesses as follows:

- 1) This will allow the Department to enter any businesses permitted or licensed pursuant to the FGC or CCR for purposes of inspecting aquatics plants and animals, water, structures, documentation, and holding equipment.



Section 236 will be revised to require vehicles transporting live aquatic plants and animals to be clearly marked and make inspection related changes. The following list contains the proposed changes:

- 1) Add subsection 236(c)(2) to require a vehicle transporting live aquatic plants or animals and used for the production or sale of live aquatic plants or animals must be labeled on each side and at the rear with the words "LIVE FISH" in legible letters at least six inches in height, one-half inch in thickness, and in plain view. A vehicle registered to a common carrier, seafood business, or pet trade business is not required to be labeled with the words "LIVE FISH" if the load is not predominately live aquatic plants or animals.
- 2) Revise subsection 236(c)(5) to clarify that the Department's inspection authority includes stopping, for purposes of inspection, shipments in or on vehicles labeled "LIVE FISH" as well as inspection of accompanying documentation.
- 3) Add subsections 236(c)(10) and (11) to list the information for denial and revocation for regulatory alignment and improve clarity.
- 4) Revise subsection 236(c)(7) to remove red swamp crayfish from the list of animals approved for long-term permits to require Department review of each shipment of this potentially invasive species.
- 5) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

Section 238 will be revised to require vehicles transporting aquaculture products to be clearly marked and make inspection related changes. The following list contains the proposed changes:

- 1) Revise subsection 238(a) to require any person involved in possession, transportation or sale of aquaculture products to exhibit the aquaculture products, sales invoice, waybill or other applicable accompanying documentation or equipment upon demand of a department official. This inspection authority includes inspection of aquaculture products, vehicles, containers, or equipment in which the aquaculture products are contained, transported or transferred.
- 2) Add subsection 238(b)(3) to require a vehicle transporting live aquatic plants or animals and used for the production or sale of live aquatic plants or animals must be labeled on each side and at the rear with the words "Live Fish" in legible letters at least six inches in height and in plain view. A vehicle registered to a common carrier, seafood business, or pet trade business is not required to be labeled with the words "LIVE FISH" if the load is not predominately live aquatic plants or animals. The department may inspect shipments of aquatic plants or animals contained in vehicles required to be labeled with the words "LIVE FISH".
- 3) Revise subsection 238(c)(4) to require the sales receipt and aquaculture products shall be immediately made available for inspection upon demand of a department employee.
- 4) Strike subsection 238(e)(1)(A) reference to abalone size limits pursuant to FGC Section 8304 since this section was repealed.
- 5) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

Section 240 will be revised to require vehicles transporting aquaculture products to be clearly marked and make inspection related changes. The following list contains the proposed changes:

- 1) Revise subsection 240(a) to require any person involved in possession, transportation or sale of aquaculture products to exhibit the aquaculture products, sales invoice, waybill or other applicable accompanying documentation or equipment upon demand of a department official. This inspection authority includes inspection of aquaculture products, vehicles, containers, or equipment in which the aquaculture products are contained, transported or transferred.
- 2) Revise subsection 240(b) to require a vehicle transporting live aquatic plants or animals and used for the production or sale of live aquatic plants or animals must be labeled on each side and at the rear with the words "LIVE FISH" in legible letters at least six inches in height, one-half inch in thickness, and in plain view. A vehicle registered to a common carrier, seafood business, or pet trade business is not required to be labeled with the words "LIVE FISH" if the load is not predominately live aquatic plants or animals. The department may inspect shipments of aquatic plants or animals contained in vehicles required to be labeled with the words "LIVE FISH".

- 3) Additional minor changes are proposed to align and clarify the regulations and reduce public confusion.

**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 Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, June 25, 2009, 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, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, 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 July 30, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 4, 2009. All comments must be received no later than August 6, 2009, at the hearing in Woodland, 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 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, John Carlson, Jr., 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 John Carlson, Jr., or Anita Biedermann at the preceding address or phone number. **Mr. Neil Manji, Chief, Fisheries Branch, Department of Fish and Game, phone (916) 327-8840, 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. 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

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 action will not have a significant statewide adverse economic impact directly affecting legal business or businesses that are free of diseases and invasive species such as quagga mussels. Inspection authority impacts those businesses operating in violation of laws and regulations or businesses that may contribute to the spread of invasive species, while at the same time enhancing the ability of businesses that are in compliance to compete for market share. Appropriate inspection measures may help in the fight against invasive species such as quagga mussels. The spread of invasive species can have a serious economic and environmental impact within California.

(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: None.

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

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

FISH AND GAME COMMISSION

John Carlson, Jr.  
Executive Director

Dated: May 19, 2009

JOHN CARLSON, JR.  
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ARNOLD SCHWARZENEGGER



Governor

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Upland

STATE OF CALIFORNIA

**Fish and Game Commission**

June 15, 2009

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action resulting from the Commission's December 12, 2008, meeting, when it made a finding pursuant to Section 2075.5, Fish and Game Code, that American peregrine falcon (*Falco peregrinus anatum*) warrants delisting from the list of endangered species status. The notice of proposed regulatory action will be published in the California Regulatory Notice Register on June 19, 2009.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sheri Tiemann  
Staff Services Analyst

Attachment

2009 JUN 19 1P 2225  
BOARD OF SUPERVISORS

**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 2070 and 2075.5 of the Fish and Game Code and to implement, interpret or make specific sections 1755, 2055, 2062, 2067, 2070, 2072.7, 2075.5, and 2077, of said Code, proposes to amend Section 670.5, Title 14, California Code of Regulations, relating to Animals of California Declared to Be Endangered or Threatened.

**Informative Digest/Policy Statement Overview**

The Department of Fish and Game recommends that the Commission amend Subsection (a)(5) of Section 670.5 of Title 14, CCR, to delete the American peregrine falcon (*Falco peregrinus anatum*) from the list of endangered birds.

In making the recommendation to delist the American peregrine falcon pursuant to CESA, the Department relied most heavily on the following information: 1) Current American peregrine falcon breeding range in California includes most of the known historic breeding range; 2) American peregrine falcon breeding population size has increased dramatically following State and federal listing as endangered and may have reached or even exceeded historical levels within California, as best as can be determined given the uncertainty of the historic population data; 3) The threat posed to the peregrine falcon nesting populations in California by organochlorine pesticide contamination has lessened due to the restrictions imposed on the use of such substances in the United States and Canada since the 1970s. However, "hot spots" remain in the State; these areas need further evaluation and monitoring as to their impact on peregrine recovery; 4) Recovery goals specific to California populations of peregrine falcons as established through the federal recovery plan for the Pacific States have been met for range and population size; productivity goals have been met at most, but not all, sites in California; 5) The U.S. Fish and Wildlife Service (Service) delisted the peregrine falcon from the federal endangered species list in 1999 and established a monitoring program, contingent on funding, to document breeding status of this species through the year 2015. A sub-set of 30 nest sites will be monitored in California every three years, providing current occupancy and productivity data for the State's peregrine population; 6) The captive breeding and reintroduction program established in the 1970s and continued through 1992 was highly successful in aiding the recovery of the peregrine in California; and 7) If delisted, the American peregrine falcon will remain a fully protected species under Fish and Game Code section 3511(b)(1).

**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 Yolo Fliers Club Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, 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 July 30, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 4, 2009. All comments must be received no later than August 6, 2009 at the hearing in Woodland, 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 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, John Carlson, Jr., 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 John Carlson, Jr., or Sheri Tiemann at the preceding address or phone number. **Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, 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. 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

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.

Although the statutes of the California Endangered Species Act (CESA) do not specifically prohibit the consideration of economic impact in determining if listing is warranted, the Office of the Attorney General has consistently advised the Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing or delisting process.

CESA is basically a two-stage process. During the first stage, the Commission must make a finding on whether or not the petitioned action is warranted. By statute, once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this second stage, the Commission follows the statutes of the Administrative Procedure Act (APA).

The provisions of the APA, specifically sections 11346.3 and 11346.5 of the Government Code, require an analysis of the economic impact of the proposed regulatory action.

While Section 11346.3 requires an analysis of economic impact on businesses and private persons, it also contains a subdivision (a) which provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws. In this regard, the provisions of CESA leading to a finding are in apparent conflict with Section 11346.3, which is activated by the rulemaking component of CESA.

Since the finding portion of CESA is silent to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 does not exclude the requirement for economic impact analysis. While the Commission does not believe this is the case, an abbreviated analysis of the likely economic impact of the proposed regulation change on businesses and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

Delisting of the American peregrine falcon will remove the species from the provisions of CESA. However, this delisting action is not expected to result in any significant adverse economic effect on small business or significant cost to private persons or entities undertaking activities subject to CEQA because the American peregrine falcon will remain protected under additional provisions as described elsewhere in this document.

- (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: None.
- (c) Cost Impacts on a Representative Private Person or Business:  

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Delisting the American peregrine falcon will not result in any significant cost to private persons or businesses undertaking activities subject to CEQA and may result in a cost savings to such persons and businesses.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (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: 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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: June 9, 2009

John Carlson, Jr.  
Executive Director