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9/18/14

August 28, 2014

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to Sections 465 and 472, Title 14, California Code of Regulations, relating to the prohibition of prizes for the take of furbearers and nongame mammals, which will be published in the California Regulatory Notice Register on August 29, 2014.

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

Ms. Caren Woodson, Fish and Game Commission, phone (916) 651-1329, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Caren Woodson
Associate Government Program Analyst

Enclosure

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, 3003.1, 3800, 4009.5, and 4150, of the Fish and Game Code and to implement, interpret, or make specific sections 200, 201, 202, 203, 203.1, 206, 207, 355, 2003, 3800, and 4150 of said Code, proposes to amend Sections 465 and 472, Title 14, California Code of Regulations, relating to take of nongame animals.

Informative Digest/Policy Statement Overview

Section 2003 of Fish and Game Code (FGC), subsection (a) prohibits offering prizes or other inducements "for the taking of game birds, mammals, fish, reptiles or amphibians in an individual contest, tournament or derby." However, Section 2003, FGC, then goes on to provide limited exceptions to this rule. These exceptions permit take of game fish if permitted by the Department of Fish and Wildlife (Department), frog-jumping contests, fish contests conducted in the waters of the Pacific Ocean, and, in subsection (d), the offering of prizes "for the taking of game birds and mammals, if the total value of all prizes or other inducements is less than five hundred dollars ($500)." The Commission's proposed regulatory changes resolve the potential inconsistent treatment of "game" and "nongame mammals" in subsections (a) and (d) by clarifying that Section 2003, FGC, prohibits offering prizes or inducements for take of all mammals (game, nongame, and furbearers) in subsection (a), and, in subsection (d) permits prize offerings of less than $500 only for the take of game mammals.

The Commission reasons the word "game" preceding "birds" in subsection (a) was not intended to apply to "mammals" because the use of a comma between "birds" and "mammals" makes clear that "game" only applies to "birds" in this general prohibition. Subsection (a) is clearly a longstanding broad prohibition protecting game birds and all mammals, fish, reptiles, and amphibians. Turning to subsection (d), the Commission further reasons that in this later added subsection the word "game" preceding "birds" was intended to apply to "mammals."

The Commission views the alternative reading of subsection 2003(d), FGC, permitting inducements for the unlimited take of furbearers and nongame mammals as unsportsmanlike and likely not the intent of the legislature in the 2004 amendment adding subsection (d). The Commission believes that offering inducements for hunting contests of animals with no regulated take does not reflect good sportsmanship or the likely intent of the legislature. Therefore, the Commission believes the changes to sections 465 and 472 clarify the proper interpretation of subsection 2003(d), FGC, and recognize and encourage sportsmanlike behavior.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate take and possession of nongame

mammals (Sections 203 and 4150). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to offering prizes or other inducements for the take of furbearers and nongame animals.

Benefits of the Proposed Regulations

Adoption of clear instruction about the legal hunting of furbearers and nongame mammals provides for the conservation, maintenance, and utilization of the living resources of the state's wildlife under the jurisdiction of the state for the benefit of all the citizens of the state. The proposed regulations provide continued recreational opportunity to the public, afford opportunities for multi-generational family activities, and promote respect for California's environment by the future stewards of the State's resources. The fees that hunters pay for licenses and stamps are used for conservation.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Mount Shasta Hatchery Museum, 1 North Old Stage Road, Mount Shasta, California, on Wednesday, October 8, 2014, 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 Airtel Plaza Hotel, 7277 Valjean Avenue, Van Nuys, California, on Wednesday, December 3, 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 November 20, 2014, at the address given below, or by fax at (916) 653-5040, or by email to FGC@fgc.ca.gov. **Written comments mailed, faxed or emailed to the Commission office, must be received before 12:00 noon on November 26, 2014.** All comments must be received no later than December 3, 2014, at the hearing in Van Nuys, California. 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 Caren Woodson at the preceding address or phone number. **Caren Woodson, Fish and Game Commission, phone 916-651-1329, 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 proposal clarifies and strengthens the enforceability of portions of the current regulation.

(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:

The Commission does not anticipate any impacts the proposed action would have on the creation or elimination of jobs or businesses in California or on the expansion of businesses in California; and, does not anticipate benefits to worker safety, because the proposal only clarifies the application of a specific section of Fish and Game Code.

The Commission anticipates benefits to the health and welfare of California residents. The proposed regulations are intended to provide continued recreational opportunity to the public. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources.

The Commission anticipates benefits to the environment by the sustainable

management of California's upland game resources. The fees that hunters pay for licenses and stamps are used for conservation.

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

The Commission 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, 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: