

# Laws and Regulations

## Introduction

All wildlife in California that is not held by private ownership or legally acquired is the property of the people (State). Wildlife by definition includes mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans. The classification can be widened to include other unforeseen wildlife, California Fish & Game Code § 716.3(q). The classification may vary from state to state. Wildlife in California, as a 'public' resource, are protected by both state and federal laws.

Prior to embarking on any form of vertebrate pest management program the federal and or state legal status of the animal must be determined. The legal status afforded an animal will influence the selection of an appropriate management technique, whether lethal or non lethal, or an integrated pest management program. Wildlife problems are caused by many different types of damage. Pest is a term defined by people and not the animal.

Knowledge of and compliance with local, state, and federal regulations regarding the use, storage, disposal, and record keeping of pesticides used in vertebrate pest control programs is essential. The use of the pesticides in manners not consistent with label instructions can increase the risks to non-target species or result in less effective control programs. The improper use of pesticides can have wide ranging effects; reduce efficacy, safety, and increase cost, result in fines, loss of the use of the chemical as a management option, and has the potential for adverse media coverage.

Any individual or entity planning to undertake vertebrate pest management should bear in mind that in addition to all federal and state laws, there may be county or city ordinances that apply to specific wildlife. At present, International considerations such as the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), are adhered to voluntarily. This means that states within the U.S. agree to be bound to the Convention. Such treaties, laws, and regulations are subject to change. It is recommended that the following list of federal and state regulatory agencies be consulted regarding law concerning wildlife legal status:

## Federal

### [US Department of Agriculture – Animal and Plant Health Inspection Service \(USDA- APHIS\)](#)

The Animal and Plant Health inspection Service (APHIS) is responsible for protecting and promoting U.S. agricultural health, administering the Animal Welfare Act, and carrying out wildlife damage management activities.

This federal agency is authorized to carry out predator, bird, and rodent control activities in order to protect American agriculture. Their activities are coordinated, concurrently, in the State of California by the [California Department of Food and Agriculture](#) (CDFA).

### [The US Fish and Wildlife Service](#) (USFWS). Telephone: 1-800-344-9453

The USFWS has regulatory authority to prevent or restrict activities which may affect certain protected or defined wildlife species. The applicable cooperating state agency is the [California Department of Fish and Game](#) (CDFW).

## State – California

The California legislature has declared wildlife the property of the people. Within California three agencies exercise governance and regulate wildlife management:

[California Department of Food and Agriculture](#) (CDFA). Agriculture is a major industry for California. With 88,000 farms and ranches, California agriculture is nearly a \$32 billion dollar industry that generates \$100 billion in related economic activity. The CDFA supports agricultural by working with private industry, academia and public sector

agencies.

[California Department of Fish and Game](#) (CDFG). The California Department of Fish and Game manages California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. The department is also responsible for the diversified use of fish and wildlife including recreational, commercial, scientific and educational uses. Working through the CDFG are both the:

[Fish and Game Commission](#) (FGC)

The Commission reviews and discusses proposed regulations, permits, licenses, management policies. Its policies concern fisheries and wildlife management, introduction of exotics, use of departmentally-administered land and a variety of other subjects. The Commission's regulatory powers functions include deciding seasons, bag limits and methods of take for game animals and sport fish.

[Wildlife Conservation Board](#) (WCB)

The Wildlife Conservation Board's three main functions are land acquisition, habitat restoration and development of wildlife oriented public access facilities.

[California Environmental Protection Agency](#) (Cal/EPA)

Under the CEPA is the [California Department of Pesticide Regulation](#) (DPR). The DPR protects human health and the environment by regulating pesticide sales and use and fostering reduced-risk pest management.

***County and Local***

California counties and municipalities also affect local urban vertebrate pest management. Each entity may enact law or ordinances applicable to their jurisdictions that govern the use of specific wildlife control techniques. For example, it may be unlawful to discharge a firearm within city limits but not county limits. Some local city ordinances may also restrict the use of certain vertebrate pest control activities.

Consultation with one or more of the above agencies is recommended, before embarking on any pest management program.

[California Agricultural Commissioners](#) - CAC's

The size and diversity of California agriculture has resulted in a much more complex partnership between State and local pesticide regulatory authorities than anywhere else in the nation. California Department of Pesticide Regulation (DPR) works closely with California's County Agricultural Commissioners (CAC's), who serve as the primary enforcement agents for State pesticide laws and regulations. Each County Board of Supervisors have appointed County Agricultural Commissioners in all the state's 58 counties. CAC's receive State as well as county funding, and they enforce State laws and regulations that cover environmental protection, pest prevention, worker and consumer protection, and a variety of special services.

Farmers must obtain site-specific permits from their CAC to purchase and use many agricultural chemicals. The commissioner must evaluate the proposed application to determine whether it is near a sensitive area, such as wetlands, residential neighborhoods, schools, or organic fields. State law requires commissioners to ensure that applicators take precautions to protect people and the environment. Based on this evaluation, the CAC may deny the permit or require specific use practices to mitigate any hazards. CAC's regulate pesticide use to prevent misapplication or drift, and possible contamination of people or the environment. CAC's staff also enforce regulations to protect ground and surface water from pesticide contamination, and they may work with regional water boards and the State Water Resources Control Board. Some CAC's serve as air pollution control officers for their counties. Among a CAC's most important responsibilities is the investigation of pesticide-related illnesses and injuries. In most counties, the CAC is the first contact on any farm related issue. Commissioners enforce many laws administered by the California Department of Food and

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Agriculture (CDFA), including those related to pest detection and exclusion and to quality standards for fruits and vegetables. Additionally, CAC's work with the State Department of Fish and Game to prevent agricultural runoff (and similar problems) into wildlife areas.

Although they are called "agricultural" commissioners, CAC duties range far beyond the farm gate. For example, CAC employees check maintenance gardeners to ensure they are licensed to apply pesticides, and that their pesticides are labeled for professional landscaping. CAC biologists inspect home pesticide applications, such as structural fumigations for termites, and check structural pest control employees for proper training and equipment. Outside the pesticide arena, County Agricultural Commissioners have responsibilities including conducting weights and measures programs. All but four commissioners also serve as county sealers, who check supermarket scales and gasoline pumps for accuracy. More information is accessible through the [California Department of Food and Agriculture](#) website.

### ***Important Terms and Definitions***

Laws and regulations concerning wildlife pest management contain many different terms and definitions. Some of the most important are provided in this chapter. Although rare, definitions and terms are legislation; and are always subject to change. It is recommended that you consult the applicable legislation directly for the latest interpretation.

#### **Mammal Definitions**

In California all mammal wildlife fits into four categories. These are defined in the California Fish and Game Code (CFG) as:

CFG § 3950: Game mammal— e.g. Deer, Cottontail

CFG § 4150: NonGame mammal— e.g. Woodrat, Ground Squirrel

CFG § 4000: Furbearers – e.g. Mink, Muskrat

CFG § 2080 & 4700: Protected mammal— e.g. Desert Kit Fox, Golden Eagle, Condor

#### **Game Mammals**

**CFG § 3950. (a)** Game mammals are: deer (genus *Odocoileus*), elk (genus *Cervus*), prong-horned antelope (genus *Antilocapra*), wild pigs, including feral pigs and European wild boars (genus *Sus*), black and brown or cinnamon bears (genus *Euarctos*), mountain lions (genus *Felis*), jackrabbits and varying hares (genus *Lepus*), cottontails, brush rabbits, pigmy rabbits (genus *Sylvilagus*), and tree squirrels (genus *Sciurus* and *Tamiasciurus*).

**(b)** Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) are game mammals only for the purposes of sport hunting described in subdivision (b) of Section 4902.

#### **Non Game Mammals**

**CFG § 4150.** All mammals occurring naturally in California which are not game mammals, fully protected mammals, or fur-bearing mammals, are nongame mammals. Nongame mammals or parts thereof may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission.

#### **Fur Bearers**

**CFG § 4000.** The following are fur-bearing mammals: pine marten, fisher, wolverine, mink, river otter, gray fox, cross fox, silver fox, red fox, kit fox, raccoon, beaver, badger, and muskrat.

#### **Protected Mammals**

Key provisions regarding protected mammals are found in F&G Code sections 2080 and 4700. An excerpt listing all fully protected mammals is provided below.

**CFG § 4700 (b):** The following are fully protected mammals:

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- Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).
- Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.
- Northern elephant seal (*Mirounga angustirostris*).
- Guadalupe fur seal (*Arctocephalus townsendi*).
- Ring-tailed cat (genus *Bassariscus*).
- Pacific right whale (*Eubalaena sieboldi*).
- Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- Southern sea otter (*Enhydra lutris nereis*).
- Wolverine (*Gulo luscus*).

### **Bird Definitions**

The following is the Federal definition of Migratory Bird.

Migratory Bird Defined:

#### **Title 16 Chapter 7 Subchapter III Section 715j:**

For the purposes of this subchapter and the Migratory Bird Treaty Act ([16 U.S.C. 703](#) et seq.), migratory birds are those defined as such by the treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 ([39 Stat. 1702](#)), the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 ([50 Stat. 1311](#)), the Convention between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and their Environment concluded March 4, 1972, and the Convention between the United States and the Union of Soviet Socialist Republics for the Conservation of Migratory Birds and their Environment concluded November 19, 1976.

The list of migratory birds described in the above definition is available online through the [US Fish and Wildlife Service](#).

It is important to remember that the term ‘migratory bird’ is a classification and not a description. For example, a crow which is permanently in your field for 5 years is still classified as a migratory bird, despite not migrating away.

Birds are also categorized in the California Fish and Game Code:

#### **Game Birds – Resident and Migratory**

**CFGC § 3500.** Resident game birds are: Chinese spotted doves, ringed turtledoves of the family Columbidae, California quail and varieties thereof, Gambel or desert quail, mountain quail and varieties thereof, sooty or blue grouse and varieties thereof, ruffed grouse, sage hens and sage grouse, Hungarian partridges, red-legged partridges including the chukar and other varieties, ring-necked pheasants and varieties, and wild turkeys of the order Galliformes.

Migratory game birds are: ducks and geese, coots and gallinules, jacksnipe, western mourning doves, white-winged doves and band-tailed pigeons. References in this code to “game birds” mean both resident game birds and migratory game birds.

#### **NonGame Birds**

**CFGC § 3800. (a)** All birds occurring naturally in California that are not resident game birds, migratory game birds, or fully protected birds are nongame birds. It is unlawful to take any nongame bird except as provided in this code or in accordance with regulations of the commission or, when relating to mining operations, a mitigation plan approved by the department.

#### **Fully Protected Birds**

**CFGC § 3511 (3b):** In part states. The following are fully protected birds:

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- American peregrine falcon (*Falco peregrinus anatum*).
- Brown pelican (*Pelecanus occidentalis*).
- California black rail (*Laterallus jamaicensis coturniculus*).
- California clapper rail (*Rallus longirostris obsoletus*).
- California condor (*Gymnogyps californianus*).
- California least tern (*Sterna albifrons browni*).
- Golden eagle (*Aquila chrysaetos*).
- Greater sandhill crane (*Grus canadensis tabida*).
- Light-footed clapper rail (*Rallus longirostris levipes*).
- Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).
- Trumpeter swan (*Cygnus buccinator*).
- White-tailed kite (*Elanus leucurus*).
- Yuma clapper rail (*Rallus longirostris yumanensis*).

### **Other Important Definitions from California Fish and Game Code:**

Additional definitions and terms can be found in sections 1 to 89 of the California Fish and Game Code, i.e. bag limits, closed season, buy, etc, available at the [Find California Code](#) website. Some often inquired about terms are:

#### **Take**

**CFGFC § 86.** "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

#### **Person**

**CFGFC § 67.** "Person" means any natural person or any partnership, corporation, limited liability company, trust, or other type of association.

#### **Sell**

**CFGFC § 75.** "Sell" includes offer or possess for sale, barter, exchange, or trade.

#### **Bird**

**CFGFC § 22.** "Bird" means any wild bird or any part thereof.

#### **Mammal**

**CFGFC § 54.** "Mammal" means any wild or feral mammal or any part thereof, but not any wild, feral, or undomesticated burro.

#### **Harassment of Animals**

**14 CCR § 251.1** Except as otherwise authorized in these regulations or in the Fish and Game Code, no person shall harass, herd or drive any game or nongame bird or mammal or furbearing mammal. For the purposes of this section, harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering. This section does not apply to a landowner or tenant who drives or herds birds or mammals for the purpose of preventing damage to private or public property, including aquaculture and agriculture crops.

Note: Authority cited: Sections 200, 202, 203, 355, 3800 and 4150, Fish and Game Code. Reference: Sections 200, 202, 203, 203.1, 207, 215, 220, 2000, 3800 and 4150, Fish and Game Code.

## ***Solving Wildlife Damage Problems in California***

Wildlife can cause many different types of damage, rendering them a “pest.” A pest is defined not by the animal but by people. A pest to some is a benefit to others. Before solving any wildlife problem, you need to know and understand the laws and regulations dealing with wildlife.

The following is a summary of some of the applicable laws and regulations discussed in this chapter:

1913 Federal Migratory Bird Law became effective introducing the first migratory bird hunting regulations. This law covers most birds in California. Please note that a ‘bird’ does not have to migrate out of the State to be considered migratory.

1940 The Bald Eagle Protection Act became law “...prohibiting a variety of activities involving the species, including import, export, take, sale, purchase, or barter.”

1962 The Bald and Golden Eagle Protection Act enacted The Bald Eagle Protection Act of 1940 and extended its protection to golden eagles.

1971 Airborne Hunting Act signed into law prohibiting use of aircraft for hunting or harassing wildlife.

1973 Endangered Species Act This Act “...expanded the scope of prohibited activities to include not only importation, but also exportation, take, possession, and other activities involving illegally taken species, and interstate or foreign commercial activities. It implemented protection for a new “threatened” category: – species likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

California State Law: In California the applicable laws and regulations relating to wildlife are Federal laws and the California Fish and Game Code and Title 14 of the California Code of Regulations:

### [California Fish and Game Code](#)

[Title 14 of the California Code of Regulations](#) (CCR’s). Certain regulations (e.g.: seasons, bag limits and methods of take) relating to fish and game are promulgated by the [Fish and Game Commission](#).

In the United States ‘wildlife’ has a different status than some other countries. For example, in many other countries, a wolf living on a sheep farm belongs to the farmer. If this wolf jumps a fence into the neighboring farm, he now belongs to the neighboring farmer. In the United States, this is not the case. Wildlife belongs to all the citizens, no matter whose property it may be found on. Wildlife can be managed/harmed only under special circumstances (most often depredation of private property, land or in self-defense) and then only certain species (i.e. game vs. non-game vs. protected, fur bearing)

### **Migratory Bird Treaty Act**

16 U.S.C. §§ 703-712, July 3, 1918, as amended 1936, 1960, 1968, 1969, 1974, 1978, 1986 and 1989.

**Overview:** The Migratory Bird Treaty Act (MBTA) implements into U.S. Federal law various treaties and conventions between the U.S. and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the Act, taking, killing or possessing migratory birds is unlawful. Approximately 900 birds are protected under the Act and in 2006 the [Fish and Wildlife Service](#) proposed further additions and redactions from the list.

**Prohibited Acts:** Unless permitted by regulations, the Act provides that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. Subject to limitations in the Act, the Secretary of the Interior (Secretary) may adopt regulations determining the extent to which, if at

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all, hunting, taking, capturing, killing, possessing, selling, purchasing, shipping, transporting or exporting of any migratory bird, part, nest or egg will be allowed, having regard for temperature zones, distribution, abundance, economic value, breeding habits and migratory flight patterns. Regulations are effective upon Presidential approval. §§ 703 and 704.

The Act makes it unlawful to: To ship, transport or carry from one state, territory or district to another, or through a foreign country, any bird, part, nest or egg that was captured, killed, taken, shipped, transported or carried contrary to the laws from where it was obtained; import from Canada any bird, part, nest or egg obtained contrary to the laws of the province from which it was obtained. § 705.

The Migratory Bird Conventions with Canada and Mexico define "game birds" as those species belonging to the following families: Anatidae (swans, geese, and ducks), Rallidae (rails, gallinules, and coots), Gruidae (cranes), Charadriidae (plovers and lapwings), Haematopodidae (oystercatchers), Recurvirostridae (stilts and avocets), Scolopacidae (sandpipers, phalaropes, and allies), and Columbidae (pigeons and doves).

The MBTA, which implements the Conventions, grants the Secretary of the Interior the authority to establish hunting seasons for any of the migratory game bird species listed below. The U.S. Fish and Wildlife Service has determined that hunting is appropriate only for those species for which there is a long tradition of hunting, and for which hunting is consistent with their population status and their long-term conservation. It is inconceivable, for example, that we will ever see legalized hunting of plovers, curlews, or the many other species of shorebirds whose populations were devastated by market gunners in the last decades of the 19th century.

Although the MBTA considers some 170 species to be "game birds," less than 60 species are typically hunted each year. The U.S. Fish and Wildlife Service publish migratory game bird regulations in the Federal Register. In California, specific regulation information is available from the [California Department of Fish and Game](#).

The MBTA should not be construed as preventing states and territories from making or enforcing laws or regulations not inconsistent with the Act or which give further protection to migratory birds, nests and eggs, if such laws and regulations do not extend open seasons. § 708.

The MBTA cannot be construed to prevent the breeding of migratory game birds on farms and preserves, and the sale of birds lawfully bred to increase the food supply. § 711.

### **List of Migratory Birds**

A list and searchable database of all species of migratory birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) is available at the following website <http://www.fws.gov/migratorybirds/intrnltr/mbta/mbtandx.html>. This list can be searched in Alphabetic or Taxonomic format

### **Airborne Hunting – Fish and Wildlife Act 1956**

A section prohibiting airborne hunting activities was added to the Fish and Wildlife Act 1956, and is commonly referred to as the Airborne Hunting Act. 16 U.S.C. § 742j-1, November 18, 1971, as amended 1972.

In summary the Act prohibits harassing, capturing or killing birds, fish and other animals from aircraft, with certain limited exceptions. For the purposes of the Act an Aircraft is defined as any contrivance used for flight in the air. § 742j-1c.

The Act imposes fines, imprisonment for up to one year, or both on a person who while airborne in an aircraft shoots or attempts to shoot to capture or kill any bird, fish or other animal; uses an aircraft to harass any bird, fish or other animal; knowingly participates in using an aircraft for any of these purposes.

These airborne hunting prohibitions do not apply to state or federal employees, authorized agents, or persons acting under a license or permit, who are authorized to administer or protect land, water, wildlife, livestock, domesticated animals, human life or crops. Each person authorized under a license or permit must report to the issuing authority each calendar quarter the number and type of animals taken. Each state that issues permits must file with the Secretary of Interior an

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annual report listing permit holders, animals authorized to be taken, the animals actually taken and the reason for issuing the permits. § 742j-1a-b.

Weblink: [www.fws.gov/laws/laws\\_digest/AIRBORN.HTML](http://www.fws.gov/laws/laws_digest/AIRBORN.HTML)

### **Endangered Species Act, 1973**

The [Endangered Species Act](#) (ESA), provides broad protection for species of fish, wildlife and plants that are listed as threatened or endangered in the U.S. or elsewhere. Provisions are made for listing species, as well as for recovery plans and the designation of critical habitat for listed species. The Act outlines procedures for federal agencies to follow when taking actions that may jeopardize listed species, and contains exceptions and exemptions. The Endangered Species Act also is the enabling legislation for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, commonly known as CITES. Criminal and civil penalties are provided for violations of the Act and the Convention.

### **Federal, Insecticide, Fungicide and Rodenticide Act, 1996**

The Federal Insecticide, Fungicide, and Rodenticide Act, 1996 (FIFRA) is a Federal law which creates the United States system of pesticide regulation to protect applicators, consumers and the environment. It is administered by the [Environmental Protection Agency](#) (EPA) and the appropriate environmental agencies of the respective states. In California that agency is the [California Department of Pesticide Regulation](#). FIFRA (1996) superseded the Federal Insecticide Act, 1910 and the Federal Insecticide, Fungicide, and Rodenticide Acts of 1947 and 1972.

Essentially FIFRA established registration for all pesticides. This registration can only be accomplished after a period of data collection to determine the effectiveness of a pesticide for its intended use, appropriate dosage, and hazards of the particular material utilized in the pesticide. Label registration can cost millions of dollars, and often it takes several years to register a pesticide. When registered, a label is created to instruct the final user concerning the proper usage of the material. It is unlawful to use any pesticide not in accordance with the label.

Label directions are designed to maximize the effectiveness of the product, while protecting the applicator, consumers, and the environment.

Some pesticides are available to the general public, and can be used by anyone who will follow directions. Most agricultural pesticides are considered too hazardous for general use, and are restricted to certified applicators. FIFRA established a system of examination and certification both at the private level and at the commercial level for applicators who wish to purchase and use restricted pesticides. The distribution of restricted pesticides is also monitored. In California this monitoring is carried out by the [Department of Food and Agriculture](#) via offices of the Agriculture Commissioner in 58 counties in the State.

### ***Internet/ Online Hunting – California Fish and Game Code***

Most States, including California, have enacted recent legislation making 'online hunting' illegal. California is one of these States and has made all forms of internet/online hunting illegal. In California the [Fish and Game Code](#) states:

**CFGC 3003. (a)** It is unlawful for any person to shoot, shoot at, or kill any bird or mammal with any gun or other device accessed via an Internet connection in this state.

**(b)** It is further unlawful for any person, firm, corporation, partnership, limited liability company, association, or other business entity to do either of the following:

- Own or operate a shooting range, site, or gallery located in the state for purposes of the online shooting or spearing of any bird or mammal.
- Create, maintain, or utilize an Internet Web site, or a service or business via any other means, from any location within the state for purposes of the online shooting or spearing of any bird or mammal for the purposes of this section.

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**(c)** It is unlawful to possess or confine any bird or mammal in furtherance of an activity prohibited by this section.

**(d)** It is unlawful for any person in this state to import into, or export from, this state any bird or mammal, or any part thereof, that is killed by any device accessed via an Internet connection.

**(e)** Any bird or mammal, or any part thereof, that is possessed in violation of this section shall be subject to seizure by the department.

**(f)** For the purposes of this section, "online shooting or spearing" means the use of a computer or any other device, equipment, software, or technology, to remotely control the aiming and discharge of any weapon, including, but not limited to, any firearm, bow and arrow, spear, slingshot, harpoon, or any other projectile device.

## ***Pesticides***

Some vertebrate pest control bait materials require a Restricted Use Permit; these include zinc phosphide, aluminum phosphide, strychnine, and acrolein. Some pesticides are restricted in their use in certain areas because of endangered species protection.

Check the [Department of Pesticide Regulation](#) website for further details and for tools to establish whether endangered species conservation is present in your local area.

## ***Common Examples of wildlife Damage Problems***

Some common wildlife damage problems are discussed below.

### ISSUE 1 – EXCLUSION

When you exclude you are keeping wildlife from entering or reentering an area. Always watch that you don't confine the animal in the area, as that can be considered a form of "take."

For example: You can prevent swallows from building nests in the eaves of your house by installing a barrier that keeps swallows from reaching the eave. Yet you cannot build a barrier if a nest is already present in that area as this can be considered a form of "take" (you are in possession of a swallow's nest and you are harming the eggs). This example is true for all mammals and birds.

Another example: you can place bird netting on grapevines to prevent depredation of your vineyard crops but the inadvertent capture of any birds in the netting can be considered "take."

### ISSUE 2 – SCARING

Scaring is another method of wildlife control often employed. Scaring techniques range from the age-old scarecrow to state-of-the-art pyrotechnics and mechanical sound devices. Some have proven to be effective while others have not. When employing scare tactics in wildlife control, you must be careful not to violate the law. For example, the California Code of Regulations (CCR's), [section 251.1](#), defines "harassment" as "...an intentional act which disrupts an animal's normal behavior pattern, which includes, but is not limited to, breeding, feeding or sheltering." This section further states that harassment is illegal except in cases where a landowner or tenant drives or herds birds or mammals for the purpose of preventing damage to private or public property, including aquaculture and agriculture crops (with the exception of protected species where a permit is necessary for harassment).

It is also unlawful to pursue, drive, or herd any bird or mammals with any motorized water, land or air vehicle ([F&G code 3003.5](#)) except for the \ circumstances outlined above: private landowners harassing non- protected depredating species (or if harassing with a permit if it's a protected species) to prevent damage to crops, etc.

### ISSUE 3 – LETHAL CONTROL

Hunting, trapping, and pesticide use are all strictly regulated methods of pest control. In many cases permits are needed to

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'take' specific species of mammal or bird. Animals in this situation include most birds e.g. crows, ravens, blackbirds, waterfowl, woodpeckers, swallows and many others, (protected under the Migratory Bird Treaty Act– even if they do not migrate), and most hunted birds and mammals (game). A limited exception exists for crows and certain subspecies of blackbird when found committing or about to commit depredations upon ornamental or shade trees, agriculture crops, livestock or wildlife, or when considered a health hazard (50 CFR 21.43, 14 CCR 485). In order to control any bird falling under the Migratory Bird Act, you may have to obtain a permit.

A general depredation permit is one that is written in national law stating that certain birds may be taken at any time in any manner when found to be threatening or depredating private property, crops, etc. No special permit is required; however, you have to show that birds were depredating. Birds that fall within these categories (50 CFR 21.43) are: yellow headed, red winged, rusty, and Brewers blackbirds, cowbirds, all grackles, crows, and magpies.

Federal law allows States to specify birds that may be taken without a special permit. These species are usually localized pest species that are only a problem in specific states. Again, you must show that those birds were threatening or damaging private property or crops. You must gain local authorization, usually from your local agriculture commissioner to take birds under this statewide permit. You will be required to turn in a report about the birds taken under this permit. Under 50 CFR 21.44 the CAC may authorize take without permit to safeguard agriculture or horticultural crops for: horned larks, golden crowned, white crowned, and other crowned sparrows, and house finches.

Overview of Specific permit that may be required to conduct Vertebrate Pest Control: You must apply through the USDA APHIS for any migratory bird not included in general or statewide permits that are threatening or damaging your property. With these permits, specific number, method and full report after control are required.

## **PERMITS**

There are two distinct processes for permit applications depending on whether you require a permit for bird or mammal issues.

### **Mammals**

Overview of Specific permits that may be required to conduct Vertebrate Pest Control:

[California Fish and Game](#) require depredation permits for some species of animals. You may control any hunted species without a permit if state hunting regulations are followed (including a hunting license, as well as season and bag limits), OR you may apply to [California Fish and Game](#) directly for a depredation permit to control the damaging wildlife. When a depredation permit is issued, both number and method of control must be specified as well as a report filed.

For protected species, a permit must be obtained from the California [Department of Fish and Game](#) with very specific details as to the method of take, number of animals taken, and the reason for take. Depending on the species of animal taken for wildlife control, different agencies will issue the necessary permit.

The [US Fish and Wildlife Service](#) through USDA APHIS issues permits for any federally mandated species (i.e. migratory birds under the Migratory Bird Treaty Act).

[California Fish and Game](#) will issue permits for depredating mammals and birds which are considered game or protected. Nongame mammals and nongame birds may be taken at any time without a permit only if found depredating private property, or crops.

### **Depredation Permits**

The [California Department of Fish and Game](#) is the appropriate government agency to contact should you need a depredation permit to control mammals. In California there are seven [Fish and Game Regional offices](#). Further details regarding the depredation permit applications and procedures are available from these offices.

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The following nongame mammals may be taken at any time of the year and in any number except as prohibited in the Fish and Game Code:

- Coyote
- Weasel
- Skunk
- Opossum
- Moles
- Rodents (excluding tree and flying squirrels, and those listed as furbearers, endangered or threatened)

### **Rabbits:**

Black-tailed jackrabbits, cottontails, and brush rabbits, are classed as game mammals by the California Fish and Game Code, [Section 3950](#) (a). There is an important distinction between the three species as to when control is permitted. Jackrabbits may be taken (i.e., killed or trapped) anytime or in any legal manner by the owner or tenant of the premises, or employees thereof, if they are damaging growing crops or other property, which includes ornamental plants and irrigation lines. Cottontails or brush rabbits may be killed or trapped by the owner or tenant of the land, or by any person authorized in writing by such owner or tenant, when the rabbits are damaging crops or forage. If any person other than the owner or tenant transports cottontails or brush rabbits from the property where they were taken, they must carry written authority from the owner or tenant. All three rabbit species cannot be sold i.e. for fur or meat. Recent clarification from the California Attorney General ([Opinion 06-109, 2007](#)) makes it lawful to kill cottontail rabbits that are materially harming landscaping, ornamental plants, or gardens. The Attorney General also clarified that the taking could be done by an individual or employee using air powered pellet projectiles (air rifle), at anytime, within 150 yards of an occupied residence, if the rabbits are materially harming landscaping, ornamental plants, or gardens, and such use is in conformity with applicable local ordinances.

The following mammals can be taken for depredation under regulations or permits as described:

**Badger:** May be trapped by licensed trappers, owner of land or agent of either; ( all other regulations relating to trapping such as trap numbers, type, visitation of traps, where trap is set must be adhered to). They may be live trapped and relocated with the permission of the [Department of Fish and Game](#). Additionally badgers may be taken using poison upon written application and permit issuance. ([F&G Code 4003](#))

**Bear:** May be taken by permit only.

**Beaver:** May be trapped by licensed trappers, owner of land or agent of either; ( all other regulations relating to trapping such as trap numbers, type, visitation of traps, where trap is set must be adhered to). They may be live trapped and relocated with the permission of the [Department of Fish and Game](#). Additionally beaver may be taken using poison upon written application and permit issuance. ([F&G Code 4003](#))

**Coyotes:** May be taken at any time, in any legal manner by the owner or tenant of the premise or employees thereof in accordance with [Title 14 CCR 472](#). Certain trap restrictions apply.

**Deer:** May be taken under permit or by licensed hunters during legal deer season. Check with the [Department of Fish and Game](#) for hunting license, season, and bag limits. The permit is issued for taking of deer damaging or destroying property or land. Any owner or tenant of land or property that is being damaged or destroyed or is in immediate danger of being damaged or destroyed by deer may apply to the Department of Fish and Game for a depredation permit. ([F&G Code 4181.5](#))

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**Fur-bearing mammals:** Fur-bearing mammals (defined in [F&G Code 4000](#)) which are injuring property may be taken at any time and in any manner in accordance with [F&G Code 4180](#). Section 4180 imposes certain trapping rules. If a trap is used it must be inspected daily and any animals trapped removed daily. The trap should be inspected by the trap setter, land owner or agent of either. Pursuant to F&G Code [Section 4005](#), except for fur dealers, a trapping license is required of every person who traps furbearing or nongame mammals for profit [F&G Code 4005\(c\)](#).

**Opossum:** May be taken at any time and in any manner by the owner or tenant of the premise or employees thereof in accordance with [Section 472, Title 14, CCR](#).

**Raccoons:** May be trapped by licensed trappers, owner of land or agent of either; ( all other regulations relating to trapping such as trap numbers, type, visitation of traps, where trap is set must be adhered to). They may be live trapped and relocated with the permission of the [Department of Fish and Game](#). Additionally raccoons may be taken using poison upon written application and permit issuance. ([F&G Code 4003](#))

**Skunk:** May be taken at any time and in any manner by the owner or tenant of the premise or employees thereof in accordance with [Section 472, Title 14, CCR](#).

**Rodents:** May be taken at any time, in any manner by the owner or tenant of the premise or employees thereof in accordance with [Section 472, Title 14, CCR](#).

Specifically Gophers, House Mice, Moles, Rats, and Voles can be taken at any time by any person, [F&G Code 4005 \(f\)](#) unless they are an Endangered Species ([F&G Code 2050](#)) or fully protected species ([F&G Code 4700](#), see above). A listing of California 'endangered species is available at [14 CCR 670.5](#) and Federal endangered species is available at 50 CFR 17.11.

**Wild pigs:** Any owner or tenant of property when wild pigs are damaging or destroying or immediately threatening to damage or destroy, land or property may apply to the Department of Fish and Game for a depredation permit. California Code of Regulations [14 CCR 401](#) and California Fish and Game Code [Section 4181](#) outline the permit process and procedure. These sections are reprinted in this book under mammal control. Further detailed information is also available at [the Department of Fish and Game](#) website under the Law enforcement section.

**Endangered and Threatened species:** The following is an extract of those mammals which are listed as endangered:

- Riparian brush rabbit (*Sylvilagus bachmani riparius*)
- Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*)
- Giant kangaroo rat (*Dipodomys ingens*)
- Tipton kangaroo rat (*Dipodomys nitritoides nitratoides*)
- Fresno kangaroo rat (*Dipodomys nitritoides excilis*)
- Salt-marsh harvest mouse (*Reithrodontomys raviventris*)
- Amargosa vole (*Microtus californicus scirpensis*)
- California bighorn sheep (*Ovis canadensis californiana*)

## Birds

Overview of Specific permits that may be required to conduct Vertebrate Pest Control: Depending on the species of bird taken for wildlife control, different agencies will issue the necessary permit. You must apply through the [USDA APHIS](#) for a depredation permit for any 'migratory bird' not included in general or statewide permits that are threatening or damaging your property. With these permits, specific number, method and a full report after control is required.

[California Fish and Game](#) also requires depredation permits for some species of birds. You may control any hunted species without a permit if state hunting regulations are followed; this means a valid hunting license, as well as compliance

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with any season and bag limits. Alternatively, you may apply to California Fish and Game directly for a depredation permit to control the damaging wildlife. When a depredation permit is issued, both the number of birds taken and method of control must be specified, as well as a report filed.

For protected species, a permit must be obtained from the California Department of Fish and Game with very specific details as to the method of take, number of birds taken, and the reason for take. The US Fish and Wildlife Service through USDA APHIS issues permits for any federally mandated species (i.e. migratory birds under the Migratory Bird Treaty Act).

California Fish and Game will issue permits for depredating mammals and birds which are considered game or protected. Nongame mammals and nongame birds may be taken at any time without a permit only if found depredating or threatening private property, crops.

### **Migratory Bird Permits**

The Migratory Bird Treaty Act (MBTA) makes it illegal for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to Federal regulations.

As authorized by the Migratory Bird Treaty Act, the U.S. Fish and Wildlife Service issues permits to qualified applicants for the following types of activities: falconry, raptor propagation, scientific collecting, special purposes (rehabilitation, educational, migratory game bird propagation, and salvage), take of depredating birds, taxidermy, and waterfowl sale and disposal. Migratory bird permit policy is developed by the [Division of Migratory Bird Management](#) and the permits themselves are issued by the [Regional Bird Permit Offices](#). The regulations governing migratory bird permits can be found in Federal regulations: 50 CFR part 13 ([General Permit Procedures](#)) and 50 CFR part 21 ([Migratory Bird Permits](#)). Further information is available through the U.S. Department of Fish and Wildlife website. [www.fws.gov](http://www.fws.gov) or via the Regional office at U.S. Fish and Wildlife Service at (503) 872-2715 in Portland, Oregon.

### **Eagle Permits**

The two species of eagles that are native to the United States have additional protection under the Bald and Golden Eagle Protection Act (BGEPA). Under the BGEPA, the U.S. Fish and Wildlife Service issues permits to take, possess, and transport bald and golden eagles (*Haliaeetus leucocephalus* and *Aquila chrysaetos*) for scientific, educational, and Indian religious purposes, depredation, and falconry (golden eagles). No permit authorizes the sale, purchase, barter, trade, importation, or exportation of eagles, or their parts or feathers. The regulations governing eagle permits can be found in 50 CFR part 13 (General Permit Procedures) and 50 CFR part 22 (Eagle Permits). Further information is available through the [U.S. Fish and Wildlife Service](#) website. [www.fws.gov](http://www.fws.gov) or via the Regional office at U.S. Fish and Wildlife Service at (503) 872-2715 in Portland, Oregon.

### **Bird Banding Permits**

The banding of birds in the United States is also controlled under the Migratory Bird Treaty Act. Because banding birds requires capturing the birds and handling them before the banding takes place, a federal banding permit is required. Some states require a state permit as well. Only official federal bands may be legally placed on birds that are released to the wild within the United States. Bird banding permits, supplies of bird bands, and bird banding data are administered by the [Bird Banding Laboratory](#).

The following nongame birds may be taken at any time of the year and in any number except as prohibited in the Fish and Game Code:

- English House Sparrows and Starlings may be taken by any means or any person, except at night. [Title 14 CCR 472](#).

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### **Nongame birds**

This includes those birds not covered by the Migratory Bird Treaty Act which are found to be injuring growing crops or property may be taken by the owner or tenant of the premises. ([F&G Code 3801.5](#))

The following Birds can be taken for depredation under regulations or permits as described:

### **Blackbirds**

These may be taken by the land owner or tenant or agent of either. They may not be taken at night or by poison. ([F&G Code 3801.5](#))

### **Crows**

With proof of crop damage, or about to commit depredations, may be taken by the landowner, tenant or agents of either with written permission of the landowner or tenant, per Title 50 Code of Federal Regulations 21.43 and Title 14 CCR 485.

### **Pigeons (Rock Doves)**

Are not regulated, they are considered feral domestic fowl.

### **Migratory Birds**

Permitted taking of depredating blackbirds, cowbirds, grackles, crows and magpies. A Federal permit shall not be required to control yellow-headed red-winged, Rusty and Brewer's blackbirds, cowbirds, all grackles, crows and magpies, when found committing or about to commit depredations.

Permitted taking of depredating designated species of birds in California. In any county in California in which meadowlarks, horned larks, golden-crowned, white-crowned, and other crowned sparrows, goldfinches, and house finches, are, under extraordinary condition, seriously injurious to agricultural or other interests, the Commissioner of Agriculture may, without a permit, kill or cause to be killed under his general supervision such of the above migratory birds as may be necessary to safeguard any agricultural or horticultural crop in the county.

Permitted taking of birds injuring growing crops. Nongame birds not covered by the Migratory Bird Treaty Act which are found to be injuring growing crops or property may be taken by the owner or tenant of the premises.

## **MAMMAL CONTROL**

### *MAMMAL TRAPPING IN CALIFORNIA*

This is an area where many laws and regulations are intricate and need to be read harmoniously.

California Fish and Game Code [4005](#) is often called the 'Trapping Statute.' A summary includes:

1. Fish and Game Mammal Trapping Licenses are required to trap fur-bearing or non-game mammals or sell raw furs of such mammals. There are several exemptions to the license requirement. If you are trapping the following nongame mammals provided they are not an endangered sub species no license is required: Gophers, house mice, moles, rats, voles.
2. Structural Pest Control Licensed Operators and DPR Licensed and Certified Persons or Businesses when trapping mammals other than rats, mice, gophers, moles, and voles must adhere to all trapping conditions and restrictions ([CFGC 4004](#)).
3. Officers, employees – federal, county, city agencies or department are exempted when acting under certain provisions of the Food and Agriculture Code (6021) relating to vector diseases and field rodents.

California Fish and Game Code [4004](#) specifies trapping conditions and restrictions:

- Prohibits or restricts steel jawed, spiked and large body gripping traps
- Restricts trap and snare types and placement
- Requires individual trap identification issued by CA Fish and Game
- Requires daily trap visitation and maintenance

Title 14 California Code of Regulations adds further requirements:

- All traps (except common rat and mouse traps) must be identified with a trap identification number issued by the department. Trap number must be either stamped on trap or attached by metal tag to trap
- Immediate dispatch or release of live trapped animals is required
- Requires daily trap visitation and maintenance by trap owner or designee
- Traps may not be set within 150 yards of any residence unless set by property owner or written consent of property owner.

## LEGISLATIVE EXTRACTS

### MAMMAL CONTROL

Legislation Extracts from Title 14 California Code of Regulations:

**14 CCR 401.** Issuance of Permits to kill deer, bear, elk, wild pig, gray squirrel and beaver 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, wild pigs, deer, wild turkeys, or gray squirrels that are damaging or destroying, or immediately threatening to damage or destroy, land or property.

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

**(c) Form 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)). 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. 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 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 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 12 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 designate a qualified agent to take animals under a permit.

**(g) Written Report Required for Wild Pigs.** The permittee 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 the report to the department on or before the 15th day of the following month. Reports shall be mailed to the address provided by the department.

**(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

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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 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.

**(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.

**14 CCR 402.** Issuance of permits to kill mountain lion causing damage.

**(a)** Revocable permits may be issued by the department after receiving a report, from any owner or tenant or agent for them, of property being damaged or destroyed by mountain lion. The department shall conduct and complete an investigation within 48 hours of receiving such a report. Any mountain lion that is encountered in the act of inflicting injury to, molesting or killing livestock or domestic animals may be taken immediately if the taking is reported within 72 hours to the department and the carcass is made available to the department. Whenever immediate action will assist in the pursuit of the particular mountain lion believed to be responsible for damage to livestock or domestic animals, the department may orally authorize the pursuit and take of a mountain lion. The department shall investigate such incidents and, upon a finding that the requirements of this regulation have been met, issue a free permit for depredation purposes, and carcass tag to the person taking such mountain lion.

**(b)** Permittee may take mountain lion in the manner specified in the permit, except that no mountain lion shall be taken by means of poison, leg-hold or metal-jawed traps and snares.

**(c)** Both males and females may be taken during the period of the permit irrespective of hours or seasons.

**(d)** The privilege granted in the permit may not be transferred, and only entitles the permittee or the employee or agent of the permittee to take mountain lion. Such person must be 21 years of age or over and eligible to purchase a California hunting license.

**(e)** Any person issued a permit pursuant to this section shall report by telephone within 24 hours the capturing, injuring or killing of any mountain lion to an office of the department or, if telephoning is not practical, in writing within five days after capturing, injuring or killing of the mountain lion. Any mountain lion killed under the permit must be tagged with the special tag furnished with the permit; both tags must be completely filled out and the duplicate mailed to the Department of Fish and Game, Sacramento, within 5 days after taking any mountain lion.

**(f)** The entire carcass shall be transported within 5 days to a location agreed upon between the issuing officer and the permittee, but in no case will a permittee be required to deliver a carcass beyond the limits of his property unless he is

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willing to do so. The carcasses of mountain lions taken pursuant to this regulation shall become the property of the state.

- (g)** Animals shall be taken in a humane manner so as to prevent any undue suffering to the animals.
- (h)** The permittee shall take every reasonable precaution to prevent the carcass from spoiling until disposed of in the manner agreed upon under subsection (f) of these regulations.
- (i)** The permit does not invalidate any city, county, or state firearm regulation.
- (j)** Permits shall be issued for a period of 10 days. Permits may be renewed only after a finding by the department that further damage has occurred or will occur unless such permits are renewed. The permittee may not begin pursuit of a lion more than one mile nor continue pursuit beyond a 10-mile radius from the location of the reported damage.

**14 CCR 460.** Fisher, marten, river otter, desert kit fox and red fox.

Fisher, marten, river otter, desert kit fox and red fox may not be taken at any time.

**14 CCR 461.** Badger and gray fox.

- (a)** Badger may be taken as follows: **(1)** Season and Area: November 16 through the last day of February, statewide **(2)** Bag and Possession Limit: No limit
- (b)** Gray fox may be taken as follows **(1)** Season and Area: November 24 through the last day of February, statewide. **(2)** Bag and Possession Limit: No limit. **(3)** Dogs may be permitted to pursue gray fox in the course of breaking, training, or practicing dogs in accordance with the provisions of Section 265 of these regulations

**14 CCR 462.** Muskrat and mink.

Except as noted in Section 4180, Fish and Game Code, muskrat and mink may be taken only as follows: Season and Area: November 16 through March 31, statewide. (This regulation supersedes Section 4001 of the Fish and Game Code.) Bag and Possession Limit: No limit.

**14 CCR 463.** Beavers

Beaver may be taken only as follows:

- (a)** Season and Area: November 1 through March 31 in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Monterey, Nevada (except Sagehen Creek), Placer, Plumas, Sacramento, San Joaquin, San Luis Obispo, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba; and those portions of Riverside and San Bernardino counties within 10 miles of the Arizona-California border. (This regulation supersedes Section 4001 of the Fish and Game Code.) Bag and Possession Limit: There is no bag or possession limit in these areas for the taking of beaver.
- (b)** Beaver or any part thereof may not be taken in the balance of the state including the counties of Los Angeles, Marin, Mendocino, Napa, Orange, San Benito, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sonoma, and Ventura; and those portions of Riverside and San Bernardino counties further than 10 miles from the California-Arizona border. (This regulation supersedes Section 4001 of the Fish and Game Code.)

**14 CCR 464.** Raccoon.

- (a)** Seasons and Areas: **(1)** Raccoon may be taken from July 1 through March 31 in the following area: All of Imperial County and those portions of Riverside and San Bernardino counties lying south and east of the following line: Beginning at the intersection of Highway 86 with the north boundary of Imperial County; north along Highway 86 to the intersection

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with Interstate 10; east along Interstate 10 to its intersection with the Cottonwood Springs Road in Section 9, T6S, R11E, S.B.B.M.; north along the Cottonwood Springs Road and the Mecca Dale Road to Amboy; east along Highway 66 to the intersection with Highway 95; north along Highway 95 to the California-Nevada state line. **(2)** November 16 through March 31 in the balance of the state.

**(b)** Bag and possession limit: No limit.

**(c)** Method of Take: When taking raccoon after dark, pistols and rifles not larger than .22 caliber rimfire and shotguns using shot no larger than No. BB are the only firearms which may be used during this night period. (This regulation supersedes Sections 4001 and 4002 of the Fish and Game Code.) (See Sections 264 and 264.5 for light regulations.)

**(d)** Dogs may be permitted to pursue raccoons in the course of breaking, training or practicing dogs in accordance with the provisions of Section 265 of these regulations.

### **14 CCR 465.** Methods for taking furbearers.

Furbearing mammals may be taken only with a firearm, bow and arrow, or with the use of dogs, or traps in accordance with the provisions of Section 465.5 of these regulations and Section 3003.1 of the Fish and Game Code.

### **14 CCR 472** General provisions.

Except as otherwise provided in Sections 478 and 485 and subsections (a) through (d) below, nongame birds and mammals may not be taken.

**(a)** The following nongame birds and mammals may be taken at any time of the year and in any number except as prohibited in Chapter 6: English sparrow, starling, coyote, weasels, skunks, opossum, moles and rodents (excluding tree and flying squirrels, and those listed as furbearers, endangered or threatened species)

**(b)** Fallow, sambar, sika, and axis deer may be taken only concurrently with the general deer season.

**(c)** Aoudad, mouflon, tahr, and feral goats may be taken all year.

**(d)** American crows (*Corvus brachyrhynchos*) may be taken only under the provisions of Section 485 and by landowners or tenants, or by persons authorized in writing by such landowners or tenants, when American crows are committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance. Persons authorized by landowners or tenants to take American crows shall keep such written authorization in their possession when taking, transporting or possessing American crows. American crows may be taken only on the lands where depredations are occurring or where they constitute a health hazard or nuisance. American crows may be taken under the provisions of this subsection only by firearm, bow and arrow, or falconry. Toxicants may be used for taking crows only under the supervision of employees or officers of the Department of Food and Agriculture or federal or county pest control officers or employees acting in their official capacities and possessing a qualified applicator certificate issued pursuant to sections 14151-14155 of the Food and Agriculture Code. Such toxicants must be applied according to their label requirements developed pursuant to sections 6151-6301, Title 3, California Code of Regulations.

### **14 CCR 478.** Bobcat.

Except as provided in subsections (c) and (d) below no person shall pursue, take or possess any bobcat without first procuring a trapping license or a hunting license and bobcat hunting tags. The pursuit, take and/or possession of a bobcat under the authority of a hunting license and a bobcat hunting tag shall be in accordance with the provisions of this section and Sections 265 and 472-479 of these regulations.

Bobcats taken under the authority of a trapping license shall be taken with traps or other means in accordance with this section and Sections 265, 465, 465.5 and 475. Bobcats taken under a trapping license must be tagged in accordance with

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the provisions of Section 479.

**14 CCR 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.

**14 CCR 670.5.** Animals California declared to be Endangered or Threatened.

The following species and subspecies are hereby declared to be endangered or threatened, as indicated:

**Endangered:**

**Crustaceans:**

- California freshwater shrimp (*Syncaris pacifica*)
- Shasta crayfish (*Pacifastacus fortis*)

**Fishes:**

- Bull trout (*Salvelinus confluentus*)
- Mohave tui chub (*Gila bicolor mohavensis*)
- Owens tui chub (*Gila bicolor snyderi*)
- Bonytail (*Gila elegans*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Lost River sucker (*Deltistes luxatus*)
- Modoc sucker (*Catostomus microps*)
- (H) Shortnose sucker (*Chasmistes brevirostris*)
- Razorback sucker (*Xyrauchen texanus*)
- Desert pupfish (*Cyprinodon macularius*)
- Owens pupfish (*Cyprinodon radiosus*)
- Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*)
- Winter run chinook salmon (*Oncorhynchus tshawytscha*)
- Coho salmon (*Oncorhynchus kisutch*) south of Punta Gorda (Humboldt County), California.

**Amphibians:**

- Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*)
- Desert slender salamander (*Batrachoseps aridus*)

**Reptiles:**

- Coachella Valley fringe-toed lizard (*Uma inornata*)
- Blunt-nosed leopard lizard (*Gambelia silus*)
- San Francisco garter snake (*Thamnophis sirtalis tetrataenia*)

**Birds:**

- California brown pelican (*Pelecanus occidentalis californicus*)
- California condor (*Gymnogyps californianus*)
- Bald eagle (*Haliaeetus leucocephalus*)
- American peregrine falcon (*Falco peregrinus anatum*)
- California clapper rail (*Rallus longirostris obsoletus*)
- Light-footed clapper rail (*Rallus longirostris levipes*)
- California least tern (*Sterna antillarum browni*)

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- Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)
- Elf owl (*Micrathene whitneyi*)
- Great gray owl (*Strix nebulosa*)
- Least Bell's vireo (*Vireo bellii pusillus*)
- Inyo California towhee (*Pipilo crissalis eremophilus*)
- Willow flycatcher (*Empidonax traillii*)
- Arizona Bell's vireo (*Vireo bellii arizonae*)
- Gila woodpecker (*Melanerpes uropygialis*)
- Gilded northern flicker (*Colaptes auratus chrysoides*)
- Belding's savannah sparrow (*Passerculus sandwichensis beldingii*)
- Marbled murrelet (*Brachyramphus marmoratus*)

### Mammals:

- Riparian brush rabbit (*Sylvilagus bachmani riparius*)
- Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*)
- Giant kangaroo rat (*Dipodomys ingens*)
- Tipton kangaroo rat (*Dipodomys nitritoides nitratoides*)
- Fresno kangaroo rat (*Dipodomys nitritoides exilis*)
- Salt-marsh harvest mouse (*Reithrodontomys raviventris*)
- Amargosa vole (*Microtus californicus scirpensis*)
- California bighorn sheep (*Ovis canadensis californiana*)

### Threatened:

#### Gastropods:

- Trinity bristle snail (*Monadenia setosa*)

#### Fishes:

- Delta smelt (*Hypomesus transpacificus*)
- Cottonball Marsh pupfish (*Cyprinodon salinus milleri*)
- Rough sculpin (*Cottus asperimus*)
- Spring-run chinook salmon (*Oncorhynchus tshawytscha*) of the Sacramento River drainage.
- Coho salmon (*Oncorhynchus kisutch*) from Punta Gorda (Humboldt County), California to the northern border of California.

#### Amphibians:

- Siskiyou mountain salamander (*Plethodon stormi*)
- Kern Canyon slender salamander (*Batrachoseps simatus*)
- Tehachapi slender salamander (*Batrachoseps stebbinsi*)
- Limestone salamander (*Hydromantes brunus*)
- Shasta salamander (*Hydromantes shastae*)
- Black toad (*Bufo exsul*)

#### Reptiles:

- Desert tortoise (*Gopherus agassizii*)
- Barefoot banded gecko (*Coleonyx switaki*)
- Southern rubber boa (*Charina bottae umbratica*)
- Alameda whipsnake (*Masticophis lateralis euryxanthus*)
- Giant garter snake (*Thamnophis couchi gigas*)

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### Birds:

- Swainson's hawk (*Buteo swainsoni*)
- California black rail (*Laterallus jamaicensis coturniculus*)
- Yuma clapper rail (*Rallus longirostris yumanensis*)
- Greater sandhill crane (*Grus canadensis tabida*)
- Bank swallow (*Riparia riparia*)
- Xantus's murrelet (*Synthliboramphus hypoleucus*)

### Mammals:

- Mohave ground squirrel (*Spermophilus mohavensis*)
- San Joaquin antelope squirrel (*Ammospermophilus nelsoni*)
- Stephens' kangaroo rat (*Dipodomys stephensi*)
- Sierra Nevada red fox (*Vulpes vulpes necator*)
- San Joaquin kit fox (*Vulpes macrotis mutica*)
- Island fox (*Urocyon littoralis*)
- Wolverine (*Gulo gulo*)
- Guadalupe fur seal (*Arctocephalus townsendi*)
- Peninsular bighorn sheep (*Ovis canadensis cremnobates*)

## CALIFORNIA FISH AND GAME CODE EXTRACTS

### MAMMAL CONTROL

**CFGC 325.** Whenever after due investigation the commission finds that game mammals, other than deer, and fur-bearing mammals and resident game birds have increased in numbers in any areas, districts, or portions thereof other than a refuge or preserve established by statute, to such an extent that a surplus exists, or to such an extent that the mammals or birds are damaging public or private property, or are overgrazing their range, the commission may provide by regulation, for a special hunting season for the mammals and birds, additional to, or concurrent with any other open season specified by law; or provide for increased bag limits; or remove sex restrictions specified by law.

**CFGC 2014. (a)** It is the policy of this state to conserve its natural resources and to prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or amphibia. The state may recover damages in a civil action against any person or local agency which unlawfully or negligently takes or destroys any bird, mammal, fish, reptile, or amphibian protected by the laws of this state.

**(b)** The measure of damages is the amount which will compensate for all the detriment proximately caused by the destruction of the birds, mammals, fish, reptiles, or amphibia.

**(c)** An action to recover damages under this section shall be brought in the name of the people of the state, in a court of competent jurisdiction in the county in which the cause of action arose. The State Water Resources Control Board shall be notified of, and may join in, any action brought under this section when the activities alleged to have caused the destruction of any bird, mammal, fish, reptile, or amphibian may involve either the unlawful discharge of pollutants into the waters of the state or other violation of Division 7 (commencing with Section 13000) of the Water Code.

**(d)** This section does not apply to persons or local agencies engaged in agricultural pest control, to the destruction of fish in irrigation canals or works or irrigation drainages, or to the destruction of birds or mammals killed while damaging crops as provided by law.

**(e)** No damages may be recovered against a local agency pursuant to this section if civil penalties are assessed against the local agency for the same detriment pursuant to Division 7 (commencing with Section 13000) of the Water Code.

**(f)** Any recovery or settlement of money damages, including, but not limited to, civil penalties, arising out of any civil action filed and maintained by the Attorney General in the enforcement of this section shall be deposited by the department in the subaccounts of the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund as specified in Section 13011.

**(g)** For purposes of this section, "local agency" includes any city, county, city and county, district, public authority, or other political subdivision.

**CFGC 2000.** It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or regulations made pursuant thereto. Possession of a bird, mammal, fish, or reptile or parts thereof in or on the fields, forests, or waters of this state, or while returning there from with fishing or hunting equipment is prima facie evidence the possessor took the bird, mammal, fish or reptile or parts thereof.

**CFGC 2019.** It is unlawful for any person, including state, federal, county, and city officials or their agents, to authorize, offer or pay a bounty for any bird or mammal. This section does not apply to any person with respect to the taking of any bird or mammal on the private property of such person.

**CFGC 2050.** This chapter shall be known and may be cited as the California Endangered Species Act.

**CFGC 2052.** The Legislature further finds and declares that it is the policy of the state to conserve, protect, restore, and

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enhance any endangered species or any threatened species and its habitat and that it is the intent of the Legislature, consistent with conserving the species, to acquire lands for habitat for these species.

**CFGC 2052.1.** The Legislature further finds and declares that if any provision of this chapter requires a person to provide mitigation measures or alternatives to address a particular impact on a candidate species, threatened species, or endangered species, the measures or alternatives required shall be roughly proportional in extent to any impact on those species that is caused by that person. Where various measures or alternatives are available to meet this obligation, the measures or alternatives required shall maintain the person's objectives to the greatest extent possible consistent with this section. All required measures or alternatives shall be capable of successful implementation. This section governs the full extent of mitigation measures or alternatives that may be imposed on a person pursuant to this chapter. This section shall not affect the state's obligations set forth in Section 2052.

**CFGC 2053.** The Legislature further finds and declares that it is the policy of the state that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy. Furthermore, it is the policy of this state and the intent of the Legislature that reasonable and prudent alternatives shall be developed by the department, together with the project proponent and the state lead agency, consistent with conserving the species, while at the same time maintaining the project purpose to the greatest extent possible.

**CFGC 2118.** It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this chapter and the regulations pertaining thereto, any wild animal of the following species:

### **Class Aves (birds)**

- Family Cuculidae (cuckoos): All Species.
- Family Alaudidae (larks): Skylark, *Alauda arvensis*
- Family Corvidae (crows, jays, magpies): All species.
- Family Turdidae (thrushes): European blackbird (*Turdus merula*), Missel (or mistle) thrush (*Turdus viscivorus*)
- Family Sturnidae (starlings and mynas or mynahs): All species of the family, except hill myna (or hill mynah), *Gracula religiosa* (sometimes referred to as *Eulabes religiosa*)
- Family Ploceidae (weavers): The following species: Spanish sparrow (*Passer hispaniolensis*), Italian sparrow (*Passer italiae*), European tree sparrow (*Passer montanus*), Cape sparrow (*Passer capensis*), Madagascar weaver (*Fondia madagascariensis*), Baya weaver (*Ploceus baya*), Hawaiian rice bird (*Munia nisoria*), Red-billed quelea (*Quelea quelea*), Red-headed quelea (*Quelea erythrops*).
- Family Fringillidae (sparrows, finches, buntings): Yellowhammer (*Emberiza citronella*)

### **Class Mammalia (mammals)**

- Order Primates: All species except those in family Hominidae
- Order Edentata (sloths, anteaters, armadillos, etc.): All species.
- Order Marsupialia (marsupials or pouched mammals): All species.
- Order Insectivora (shrews, moles, hedgehogs, etc.): All species.
- Order Dermoptera (gliding lemurs): All species.
- Order Chiroptera (bats): All species.
- Order Monotremata (spiny anteaters, platypuses): All species.
- Order Pholidota (pangolins, scaly anteaters): All species.
- Order Lagomorpha (pikas, rabbits, hares): All species, except domesticated races of rabbits.
- Order Rodentia (rodents): All species, except domesticated golden hamsters, also known as Syrian hamster (*Mesocricetus auratus*); domesticated races of rats or mice (white or albino; trained, dancing or spinning, laboratory-reared); and domestic strains of guinea pig (*Cavia porcellus*).
- Order Carnivora (carnivores): All species, except domestic dogs (*Canis familiaris*) and domestic cats (*Felis catus*).

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- Order Tubulidentata (aardvarks): All species.
- Order Proboscidea (elephants): All species.
- Order Hyracoidea (hyraxes): All species.
- Order Sirenia (dugongs, manatees): All species.
- Order Perissodactyla (horses, zebras, tapirs, rhinoceroses, etc.) All species except those of the family Equidae.
- Order Artiodactyla (swine, peccaries, camels, deer, elk, except elk (genus *Cervus*) which are subject to Section 2118.2, moose, antelopes, cattle, goats, sheep, etc.) All species except: domestic swine of the family Suidae; American bison, and domestic cattle, sheep and goats of the family Bovidae; races of big-horned sheep (*Ovis canadensis*) now or formerly indigenous to this state.

Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora are restricted for the welfare of the animals, except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.

### **Class Amphibia (frogs, toads, salamanders)**

- Family Bufonidae (toads): Giant toad or marine toad (*Bufo marinus*)

### **Class Monorhina (lampreys)**

- All species

### **Class Osteichthyes (bony fishes)**

- Family Serranidae (bass): White perch, Morone or Roccus Americana
- Family Clupeidae (herring): Gizzard shad, *Dorosoma cepedianum*
- Family Sciaenidae (croakers): Freshwater sheepshead, *Aplodinotus grunniens*
- Family Characidae (characins): Banded tetra, *Astyanax fasciatus*. All species of piranhas
- Family Lepisosteidae (gars): All species.
- Family Amiidae (bowfins): All species.

### **Class Reptilia (snakes, lizards, turtles, alligators)**

- Family Crocodylidae: All species.

### **Class Crustacea (crustaceans)**

- Genus *Cambarus* (crayfishes): All species.
- Genus *Astacus* (crayfishes): All species.
- Genus *Astacopsis* (crayfishes): All species.

### **Class Gastropoda (slugs, snails, clams)**

- All species of slugs.
- All species of land snails.

Other classes, orders, families, genera, and species of wild animals which may be designated by the commission in cooperation with the Department of Food and Agriculture, (1) when the class, order, family, genus, or species is proven to be undesirable and a menace to native wildlife or the agricultural interests of the state, or (2) to provide for the welfare of wild animals.

Except as expressly authorized in this code, any live no indigenous Atlantic salmon or the roe thereof into the Smith River

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watershed.

Classes, families, genera, and species in addition to those listed in this section may be added to or deleted from the above lists from time to time by commission regulations in cooperation with the Department of Food and Agriculture.

**CFGC 2119.** The Department of Fish and Game shall publish from time to time as changes arise, a list of animals which may not be imported or transported into this State.

**CFGC 2122.** The commission shall promulgate regulations in cooperation with the State Department of Food and Agriculture for the guidance of enforcing officers. Such regulations shall include a list of the wild animals for which permits that may be issued under this chapter will be refused, and the disposition of such wild animals illegally imported into this state.

**CFGC 2250.** It is unlawful to import or transport into or possess any live muskrat (genus *Ondatra*) in California except under permit issued by the department pursuant to Section 2118, or as otherwise provided by law. A county agricultural commissioner, fish and game deputy, or state plant quarantine officer may enter upon lands or waters west of the crest of the Cascade-Sierra Nevada mountain system, and west and south of the Tehachapi, Liebre, San Gabriel, San Bernadino, San Jacinto, Cuyamaca, and connected mountains south to the international boundary, or in any watershed tributary to, or draining into, the Pacific Ocean to remove or destroy the muskrats.

**CFGC 3000.** Birds or mammal, hours for taking. It is unlawful to take any bird or mammal, except a nongame mammal, between one-half hour after sunset and one-half hour before sunrise of the following day at the place of taking, except as otherwise provided in this code or under such regulations as the commission may adopt. The commission may adopt regulations prohibiting the taking of any nongame mammal between one-half hour after sunset and one-half hour before sunrise of the following day at the place of taking.

**CFGC 3001.** Taking birds or mammals when intoxicated. It is unlawful to take birds or mammals with firearms or with bow and arrow when intoxicated.

**CFGC 3002.** Shooting game birds or mammals from boat or other vehicle. It is unlawful to shoot at any game bird or mammal, including a marine mammal as defined in Section 4500, from a powerboat, sailboat, motor vehicle, or airplane.

**CFGC 3003.5.** Pursuing, driving, or herding birds or mammals with boat or other vehicle; exceptions. It is unlawful to pursue, drive, or herd any bird or mammal with any motorized water, land, or air vehicle, including, but not limited to, a motor vehicle, airplane, powerboat, or snowmobile, except in any of the following circumstances:

1. On private property by the landowner or tenant thereof to drive or herd game mammals for the purpose of preventing damage by such mammals to private property.
2. Pursuant to a permit from the department issued under such regulations as the commission may prescribe.
3. In the pursuit of agriculture.

**CFGC 3004.** Discharging firearms or other deadly weapons within 150 yards of buildings unlawful; exceptions. It is unlawful for any person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, to hunt or to discharge while hunting, any firearm or other deadly weapon within 150 yards of any occupied dwelling house, residence, or other building or any barn or other outbuilding used in connection therewith. The 150-yard area is a "safety zone."

**CFGC 3005.** Taking birds or mammals with net, pound, cage, trap, set line or wire, or poison; possession, evidence, exceptions.

**(a)** It is unlawful to take birds or mammals with any net, pound, cage, trap, set line or wire, or poisonous substance, or to possess birds or mammals so taken, whether taken within or without this state, except as provided in this code or, when

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relating to ongoing mining operations, in accordance with a mitigation plan approved by the department.

**(b) (1)** Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of birds and mammals. When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis. **(2)** Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including ponding of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds. **(3)** The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan shall result in an overall reduction in take of avian or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site-specific basis and may provide for offsite mitigation measures designed to reduce avian mortality. The mine operator shall submit monthly monitoring reports on avian mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures. **(4)** The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved. **(5)** The mining operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of copies, as determined by the department, of the mitigation plan for public review.

**(c)** Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section.

**(d)** This section does not apply to the lawful taking of fur-bearing mammals, nongame birds, nongame mammals, or mammals found to be injuring crops or property, to the taking of birds or mammals under depredation permits, to taking by employees of the department acting in an official capacity, or to taking in accordance with the conditions of a scientific or propagation permit by the holder of that permit.

**CFGC 3005.5.** Capture or possession of bird or mammal; regulations. It is unlawful to capture any game mammal, game bird, nongame bird, nongame mammal, or furbearer, or to possess or confine any live game mammal, game bird, nongame bird, nongame mammal, or furbearer taken from the wild, except as provided by this code or regulations made pursuant thereto. Any bird or mammal possessed or confined in violation of this section shall be seized by the department.

The commission may promulgate regulations permitting the temporary confinement of game mammals, game birds, nongame birds, nongame mammals, or furbearers for the purpose of treating the animals, if injured or diseased.

**CFGC 3007.** License or permit; necessity of. Every person who takes any bird or mammal shall procure a license or permit therefor.

**CFGC 3012.** Using recorded or electrically amplified bird or mammal calls. It is unlawful to use any recorded or electrically amplified bird or mammal calls or sounds, or recorded or electrically amplified imitations of bird or mammal calls or sounds, to assist in taking any bird or mammal, except nongame birds and nongame mammals as permitted by regulations of the commission.

**CFGC 3801.5.** Nongame birds not covered by the Migratory Bird Treaty Act which are found to be injuring growing crops or property may be taken by the owner or tenant of the premises. They may also be so taken by officers or employees of the Department of Food and Agriculture or by federal or county officers or employees when acting in their official capacities pursuant to the provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Landowners and tenants taking birds in accordance with this section are exempt from Section 3007.

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**CFGC 3950.** Game Mammals.

(a) Game mammals are: deer (genus *Odocoileus*), elk (genus *Cervus*), prong-horned antelope (genus *Antilocapra*), wild pigs, including feral pigs and European wild boars (genus *Sus*), black and brown or cinnamon bears (genus *Euarctos*), mountain lions (genus *Felis*), jackrabbits and varying hares (genus *Lepus*), cottontails, brush rabbits, pigmy rabbits (genus *Sylvilagus*), and tree squirrels (genus *Sciurus* and *Tamiasciurus*).

(b) Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) are game mammals only for the purposes of sport hunting described in subdivision (b) of Section 4902.

**CFGC 3952.** The department shall develop a statewide elk management plan, consistent with the state's wildlife policy as set forth in Section 1801. The statewide elk management plan shall emphasize maintaining sufficient elk populations in perpetuity, while considering all of the following:

(a) Characteristics and geographic range of each elk subspecies within the state, including Roosevelt elk, Rocky Mountain elk, and tule elk.

(b) Habitat conditions and trends within the state.

(c) Major factors affecting elk within the state, including, but not limited to, conflicts with other land uses.

(d) Management activities necessary to achieve the goals of the plan and to alleviate property damage.

(e) Identification of high priority areas for elk management.

(f) Methods for determining population viability and the minimum population level needed to sustain local herds.

(g) Description of the necessary contents for individual herd management plans prepared for high priority areas.

**CFGC 4000.** Fur-bearing mammals defined.

The following are fur-bearing mammals: pine marten, fisher, wolverine, mink, river otter, gray fox, cross fox, silver fox, red fox, kit fox, raccoon, beaver, badger, and muskrat.

**CFGC 4001.** Fur-bearing mammal's season.

Fur-bearing mammals may be taken between November 16th and the day before the last day of February.

**CFGC 4002.** Taking of fur-bearing mammals.

Fur-bearing mammals may be taken only with a trap, a firearm, bow and arrow, poison under a proper permit, or with the use of dogs.

**CFGC 4003.** Use of poison

It is unlawful to use poison to take fur-bearing mammals without a permit from the department. The department may issue such a permit upon a written application indicating the kind of poison desired to be used and the time and place of use.

**CFGC 4004.** Prohibited methods of taking.

It is unlawful to do any of the following:

- Use a trap with saw-toothed or spiked jaws.

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- Use or sell leg-hold steel-jawed traps with a spread of 5 1/2 inches or larger without offset jaws.
- Use steel-jawed traps larger than size 1 1/2 or with a spread larger than 4 7/8 inches for taking muskrat.
- Set or maintain traps which do not bear a number or other identifying mark registered to the department or, in the case of a federal, state, county, or city agency, bear the name of that agency, except that traps set pursuant to Section 4152 or 4180 shall bear an identifying mark in a manner specified by the department. No registration fee shall be charged pursuant to this subdivision.
- Fail to visit and remove all animals from traps at least once daily. If the trapping is done pursuant to Section 4152 or 4180, the inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.
- Use a steel leg hold trap with a spread exceeding 7 1/2 inches or killer-type trap of the conibear type that is larger than 10 inches by 10 inches.
- Set or maintain steel leg hold traps within 30 feet of bait placed in a manner or position so that it may be seen by any soaring bird. As used in this subdivision, "bait" includes any bait composed of mammal, bird, or fish flesh, fur, hide, entrails, or feathers.
- Set or maintain steel leg hold traps with a spread of 5 1/2 inches or larger without a tension device

**CFGC 4005. (a)** Except as otherwise provided in this section, every person, other than a fur dealer, who traps fur-bearing mammals or nongame mammals, designated by the commission or who sells raw furs of those mammals, shall procure a trapping license. "Raw fur" means any fur, pelt, or skin that has not been tanned or cured, except that salt-cured or sun-cured pelts are raw furs.

**(b)** The department shall develop standards that are necessary to ensure the competence and proficiency of applicants for a trapping license. No person shall be issued a license until he or she has passed a test of his or her knowledge and skill in this field.

**(c)** Persons trapping mammals in accordance with Section 4152 or 4180 are not required to procure a trapping license except when providing trapping services for profit.

**(d)** No raw furs taken by persons providing trapping services for profit may be sold.

**(e)** The license requirement imposed by this section does not apply to any of the following:

- Officers or employees of federal, county, or city agencies or the department, when acting in their official capacities, or officers or employees of the Department of Food and Agriculture when acting pursuant to the Food and Agricultural Code pertaining to pests or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.
- Structural pest control operators licensed pursuant to Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code, when trapping rats, mice, voles, moles, or gophers.
- Persons and businesses licensed or certified by the Department of Pesticide Regulation pursuant to Chapter 4 (commencing with Section 11701) and Chapter 8 (commencing with Section 12201) of Division 6 of, and Chapter 3.6, (commencing with Section 14151) of Division 7 of, the Food and Agricultural Code, when trapping rats, mice, voles, moles, or gophers.

**(f)** Except for species that are listed pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 or Chapter 8 (commencing with Section 4700), nothing in this code or regulations adopted pursuant thereto shall prevent or prohibit a

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person from trapping any of the following animals:

1. Gophers
2. House mice
3. Moles
4. Rats
5. Voles

**CFGC 4011.** Mammals involved in dangerous disease outbreaks.

Fur-bearing mammals, game mammals, and nongame mammals, when involved in dangerous disease outbreaks, may be taken by duly constituted federal officers of the United States Departments of Agriculture, Interior and Public Health, and state officers of the California Departments of Food and Agriculture, Health Services, and Fish and Game.

**CFGC 4012.** Taking fox.

It is unlawful to take any cross fox, silver fox, or red fox for profit making purposes.

**CFGC 4150.** Nongame mammals.

All mammals occurring naturally in California which are not game mammals, fully protected mammals, or fur-bearing mammals, are nongame mammals. Nongame mammals or parts thereof may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission.

**CFGC 4152.** Taking of nongame mammals damaging property.

Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code by the owner or tenant of the premises or employees thereof, except that if leg hold steel-jawed traps are used to take those mammals, the traps and the use thereof shall be in accordance with subdivisions (a), (b), and (d) of Section 4004. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city, officers or employees when acting in their official capacities pursuant to the provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from the requirements of Section 3007. Raw furs, as defined in Section 4005, which are taken under this section, may not be sold.

Traps used pursuant to this section shall be inspected and all animals in the trap shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

**CFGC 4153.** Controlling harmful mammals.

The department may enter into cooperative agreements with any agency of the state or the United States for the purpose of controlling harmful nongame mammals. The department may take any mammal which, in its opinion, is unduly preying upon any bird, mammal, or fish.

**CFGC 4180.** Use of steel-jaw traps.

Except as provided for in Section 4005, fur-bearing mammals that are injuring property may be taken at any time and in any manner in accordance with this code, except that if leg hold steel-jawed traps are used to take those mammals, the traps and the use thereof shall be in accordance with subdivisions (a), (b), and (d) of Section 4004. Raw furs, as defined in Section 4005, that are taken under this section, may not be sold. Traps used pursuant to this section shall be inspected and

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all animals in the trap shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

**CFGC 4181.** Permit to kill mammals destroying land or property.

**(a)** Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.

**(b)** The permit issued for taking bears pursuant to subdivision (a) shall contain the following facts:

- Why the issuance of the permit was necessary.
- What efforts were made to solve the problem without killing the bears.
- What corrective actions should be implemented to prevent reoccurrence.

**(c)** With respect to wild pigs, the department shall provide an applicant for a depredation permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of Section 4181.1 with written information that sets forth available options for wild pig control, including, but not limited to, depredation permits, allowing periodic access to licensed hunters, and holding special hunts authorized pursuant to Section 4188. The department may maintain and make available to these persons lists of licensed hunters interested in wild pig hunting and lists of nonprofit organizations that are available to take possession of depredating wild pig carcasses.

**(d)** With respect to elk, the following procedures shall apply:

- Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all of the following:
- Verify the actual or immediately threatened damage or destruction.
- Provide a written summary of corrective measures necessary to immediately alleviate the problem.
- Determine the viability of the local herd, and determine the minimum population level needed to maintain the herd.
- Ensure the permit will not reduce the local herd below the minimum.
- Work with affected landowners to develop measures to achieve long-term resolution, while maintaining viability of the herd.

After completing the statewide elk management plan pursuant to Section 3952, the department shall use the information and methods contained in the plan to meet the requirements of subparagraphs (C), (D), and (E) of paragraph (1).

**CFGC 4181.1(a)** Any bear that is encountered while in the act of inflicting injury to, molesting, or killing, livestock may be taken immediately by the owner of the livestock or the owner's employee if the taking is reported no later than the next working day to the department and the carcass is made available to the department.

**(b)** Notwithstanding Section 4652, any wild pig that is encountered while in the act of inflicting injury to, molesting, pursuing, worrying, or killing livestock or damaging or destroying, or threatening to immediately damage or destroy, land

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or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken immediately by the owner of the livestock, land, or property or the owner's agent or employee, or by an agent or employee of any federal, state, county, or city entity when acting in his or her official capacity. The person taking the wild pig shall report the taking no later than the next working day to the department and shall make the carcass available to the department. Unless otherwise directed by the department and notwithstanding Section 4657, the person taking a wild pig pursuant to this subdivision, or to whom the carcass of a wild pig taken pursuant to this subdivision is transferred pursuant to subdivision (c), may possess the carcass of the wild pig. The person in possession of the carcass shall make use of the carcass, which may include an arrangement for the transfer of the carcass to another person or entity, such as a nonprofit organization, without compensation. The person who arranges this transfer shall be deemed to be in compliance with Section 4304. A violation of this subdivision is punishable pursuant to Section 12000. It is the intent of the Legislature that nothing in this subdivision shall be interpreted to authorize a person to take wild pigs pursuant to this subdivision in violation of a state statute or regulation or a local zoning or other ordinance that is adopted pursuant to other provisions of law and that restricts the discharge of firearms.

**(c)** The department shall make a record of each report made pursuant to subdivision (a) or (b) and may have an employee of the department investigate the taking or cause the taking to be investigated. The person taking a wild pig shall provide information as deemed necessary by the department. Upon completion of the investigation, the investigator may, upon a finding that the requirements of this section have been met with respect to the particular bear or wild pig taken under subdivision (a) or (b), issue a written statement to the person confirming that the requirements of this section have been met. The person who took the wild pig may transfer the carcass to another person without compensation.

**(d)** Notwithstanding Section 4763, any part of any bear lawfully possessed pursuant to this section is subject to Section 4758.

**(e)** Nothing in this section prohibits federal, state, or county trappers from killing or trapping bears when the bears are killing or molesting livestock, but no iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take the bear, and no person, including employees of the state, federal, or county government, shall take bear with iron-jawed or steel-jawed or any type of metal-jawed traps.

### **CFGC 4181.5. Permit for taking of deer damaging or destroying property or land.**

Any owner or tenant of land or property that is being damaged or destroyed or is in immediate danger of being damaged or destroyed by deer may apply to the department for a permit to kill such deer. The department, upon satisfactory evidence of such damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of such deer for a designated period not to exceed 60 days under regulations promulgated by the commission.

The regulations of the commission shall include provisions concerning the type of weapons to be used to kill the deer. The weapons shall be such as will ensure humane killing, but the regulations of the commission shall provide for the use of a sufficient variety of weapons to permit the designation of particular types to be used in any particular locality commensurate with the need to protect persons and property. Firearms using .22-caliber rimfire cartridges may be used only when authorized by the director. No pistols shall be used. The caliber and type of weapon to be used by each permittee shall be specified in each permit by the issuing officer who shall take into consideration the location of the area, the necessity for clean kills, the safety factor, local firearms ordinances, and other factors which apply. Rifle ammunition used shall have expanding bullets; shotgun ammunition shall have only single slugs.

The department shall issue tags similar to those provided for in Section 4331 at the same time the permit is issued. A permittee under this section shall carry the tags while hunting deer, and upon the killing of any deer, shall immediately fill out both parts of the tag and punch out clearly the date of the kill. One part of the tag shall be immediately attached to the antlers of antlered deer or to the ear of any other deer and kept attached until ten (10) days after the permit has expired. The other part of the tag shall be immediately sent to the department after it has been countersigned by any person authorized by Section 4341.

A permit issued pursuant to this section may be renewed only after a finding by the department that further damage has

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occurred or will occur unless such permit is renewed. A person seeking renewal of the permit shall account for all prior tags issued at the time he received any prior permits, and if any tags are unused, he must show either that any deer killed could not reasonably be tagged or why the killing was not accomplished within the allotted time and why such killing would be accomplished under a new time period.

**CFGC 4186.** Taking cottontail or brush rabbits that are destroying crops, etc.

Nothing in this code prohibits the owner or tenant of land, or any person authorized in writing by such owner or tenant, from taking cottontail or brush rabbits during any time of the year when damage to crops or forage is being experienced on such land. Any person other than the owner or tenant of such land shall have in possession when transporting rabbits from such property written authority from the owner or tenant of land where such rabbits were taken. Rabbits taken under the provision of this code may not be sold.

**CFGC 4188.** Licensed hunters permits for taking of deer damaging property.

**(a)** If a landowner or tenant applies for a permit under Section 4181 for wild pigs or wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or tenant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs, wild turkeys, and deer.

**(b)** The commission, in lieu of a permit as described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.

**CFGC 4700.** Prohibitions against possession, etc. of fully protected animals.

**(a) (1)** Except as provided in Section 2081.7, fully protected mammals or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected mammal, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization. **(2)** As used in this subdivision, "scientific research" does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code. **(3)** Legally imported fully protected mammals or parts thereof may be possessed under a permit issued by the department.

Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).

Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.

- Northern elephant seal (*Mirounga angustirostris*).
- Guadalupe fur seal (*Arctocephalus townsendi*).
- Ring-tailed cat (genus *Bassariscus*).
- Pacific right whale (*Eubalaena sieboldi*).

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- Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- Southern sea otter (*Enhydra lutris nereis*).
- Wolverine (*Gulo luscus*).

### **CFGC 4750.** License tag requirement; steel-jawed traps.

It is unlawful to take any bear with firearm, trap, or bow and arrow without first procuring a license tag authorizing the taking of such bear in accordance with the provisions of this chapter, but no iron or steel-jawed or any type of metal-jawed trap shall be used to take any bear.

### **CFGC 4800.** Mountain lion is specially protected; penalty for violations

(a) The mountain lion (genus *Felis*) is a specially protected mammal under the laws of this state.

(b) It is unlawful to take, injure, possess, transport, import, or sell any mountain lion or any part or product thereof, except as specifically provided in this chapter or in Chapter 2 (commencing with Section 2116) of Division 3. This chapter does not prohibit the sale or possession of any mountain lion or any part or product thereof, when the owner can demonstrate that the mountain lion, or part or product thereof, was in the person's possession on June 6, 1990.

(c) Any violation of this section is a misdemeanor punishable by imprisonment in the county jail for not more than one year, or a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment. An individual is not guilty of a violation of this section if it is demonstrated that, in taking or injuring a mountain lion, the individual was acting in self-defense or in defense of others.

(d) Section 219 does not apply to this chapter. Neither the commission nor the department shall adopt any regulation that conflicts with or supersedes any of the provisions of this chapter.

### **CFGC 4801.** Removal of mountain lion perceived as imminent threat.

The department may remove or take any mountain lion, or authorize an appropriate local agency with public safety responsibility to remove or take any mountain lion, that is perceived to be an imminent threat to public health or safety or that is perceived by the department to be an imminent threat to the survival of any threatened, endangered, candidate, or fully protected sheep species.

### **CFGC 4802.** Reporting injury to livestock or property.

Any person, or the employee or agent of a person, whose livestock or other property is being or has been injured, damaged, or destroyed by a mountain lion may report that fact to the department and request a permit to take the mountain lion.

### **CFGC 4803.** Confirmation of report.

Upon receipt of a report pursuant to Section 4802, the department, or any animal damage control officer specifically authorized by the department to carry out this responsibility, shall immediately take the action necessary to confirm that there has been depredation by a mountain lion as reported. The confirmation process shall be completed as quickly as possible, but in no event more than 48 hours after receiving the report. If satisfied that there has been depredation by a mountain lion as reported, the department shall promptly issue a permit to take the depredating mountain lion.

### **CFGC 4804.** Permit to take mountain lion; conditions.

In order to ensure that only the depredating mountain lion will be taken, the department shall issue the permit pursuant to Section 4803 with the following conditions attached:

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The permit shall expire 10 days after issuance.

The permit shall authorize the holder to begin pursuit not more than one mile from the depredation site.

The permit shall limit the pursuit of the depredating mountain lion to within a 10-mile radius from the location of the reported damage or destruction.

### **CFGC 4805.** Oral authorization.

Whenever immediate authorization will materially assist in the pursuit of the particular mountain lion believed to be responsible for the depredation reported pursuant to Section 4802, the department or the animal damage control officer may orally authorize the pursuit and taking of the depredating mountain lion, and the department shall issue a written permit for the period previously authorized as soon as practicable after the oral authorization.

### **CFGC 4806.** Reporting capturing, injuring or killing.

Any person issued a permit pursuant to Section 4803 or 4805 shall report, by telephone within 24 hours, the capturing, injuring, or killing of any mountain lion to an office of the department or, if telephoning is not practicable, in writing within five days after the capturing, injuring, or killing of the mountain lion. At the time of making the report of the capturing, injuring, or killing, the holder of the permit shall make arrangements to turn over the mountain lion or the entire carcass of the mountain lion which has been recovered to a representative of the department and shall do so in a timely manner.

### **CFGC 4807.** Conditions for immediate taking of mountain lions.

**(a)** Any mountain lion that is encountered while in the act of pursuing, inflicting injury to, or killing livestock, or domestic animals, may be taken immediately by the owner of the property or the owner's employee or agent. The taking shall be reported within 72 hours to the department. The department shall investigate the depredation, and, if the mountain lion was captured, injured, or killed, the mountain lion or the entire carcass of the mountain lion which has been recovered shall be turned over to the department. Upon satisfactorily completing the investigation and receiving the mountain lion or the carcass, if recovered, the department shall issue a permit confirming that the requirements of this section have been met with respect to the particular mountain lion taken under these circumstances.

**(b)** The department shall undertake a complete necropsy on any returned mountain lion carcass and report the findings to the commission. The commission shall compile the reported findings and prepare an annual written report that shall be submitted to the Legislature not later than the January 15 next following the year in which the mountain lion was taken.

### **CFGC 4808.** "Agent" defined.

As used in this chapter, "agent" means the agent or employee of the owner of the damaged or destroyed property, any county or city predator control officer, any employee of the Animal Damage Control Section of the United States Department of Agriculture, any departmental personnel, or any authorized or permitted houndsman registered with the department as possessing the requisite experience and having no prior conviction of any provision of this code or regulation adopted pursuant to this code. A plea of nolo contendere is a conviction for purposes of this section.

### **CFGC 4809.** Means of taking mountain lion.

Mountain lions authorized to be taken pursuant to this chapter shall be taken by the most effective means available to take the mountain lion causing the damage or destruction, except that no mountain lion shall be taken by means of poison, leg-hold or metal-jawed traps, and snares.

**Legislative Extracts from California Fish and Game Code****BIRD CONTROL**

**CFGC 2000.** It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or regulations made pursuant thereto. Possession of a bird, mammal, fish, or reptile or parts thereof in or on the fields, forests, or waters of this state, or while returning there from with fishing or hunting equipment is prima facie evidence the possessor took the bird, mammal, fish or reptile or parts thereof.

**CFGC 2019.** It is unlawful for any person, including state, federal, county, and city officials or their agents, to authorize, offer or pay a bounty for any bird or mammal. This section does not apply to any person with respect to the taking of any bird or mammal on the private property of such person.

**CFGC 2118.** It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this chapter and the regulations pertaining thereto, any wild animal of the following species:

**Class Aves: (birds)**

- Family Cuculidae (cuckoos): All Species.
- Family Alaudidae (larks): Skylark, *Alauda arvensis*
- Family Corvidae (crows, jays, magpies): All species.
- Family Turdidae (thrushes): European blackbird (*Turdus merula*), Mistle thrush (*Turdus viscivorus*)
- Family Sturnidae (starlings and mynas or mynahs): All species of the family, except hill myna (or hill mynah), *Gracula religiosa* (sometimes referred to as *Eulabes religiosa*)
- Family Ploceidae (weavers): The following species: Spanish sparrow (*Passer hispaniolensis*), Italian sparrow (*Passer italiae*), European tree sparrow (*Passer montanus*), Cape sparrow (*Passer capensis*), Madagascar weaver (*Foudia madagascariensis*), Baya weaver (*Ploceus baya*), Hawaiian rice bird (*Munia nisoria*), Red-billed quelea (*Quelea quelea*), Red-headed quelea (*Quelea erythrops*)
- Family Fringillidae (sparrows, finches, buntings): Yellowhammer, *Emberiza citrinella*

**Class Mammalia (mammals)****Order Primates: All species except those in family Hominidae**

- Order Edentata (sloths, anteaters, armadillos, etc.): All species.
- Order Marsupialia (marsupials or pouched mammals): All species.
- Order Insectivora (shrews, moles, hedgehogs, etc.): All species.
- Order Dermoptera (gliding lemurs): All species.
- Order Chiroptera (bats): All species.
- Order Monotremata (spiny anteaters, platypuses): All species.
- Order Pholidota (pangolins, scaly anteaters): All species.
- Order Lagomorpha (pikas, rabbits, hares): All species, except domesticated races of rabbits.
- Order Rodentia (rodents): All species, except domesticated golden hamsters, also known as Syrian hamster (*Mesocricetus auratus*); domesticated races of rats or mice (white or albino; trained, dancing or spinning, laboratory-reared); and domestic strains of guinea pig (*Cavia porcellus*).
- Order Carnivora (carnivores): All species, except domestic dogs (*Canis familiaris*) and domestic cats (*Felis catus*).
- Order Tubulidentata (aardvarks): All species.
- Order Proboscidea (elephants): All species.
- Order Hyracoidea (hyraxes): All species.

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- Order Sirenia (dugongs, manatees): All species.
- Order Perissodactyla (horses, zebras, tapirs, rhinoceroses, etc.) All species except those of the family Equidae.
- Order Artiodactyla (swine, peccaries, camels, deer, elk, except elk (genus *Cervus*) which are subject to Section 2118.2, moose, antelopes, cattle, goats, sheep, etc.) All species except: domestic swine of the family Suidae; American bison, and domestic cattle, sheep and goats of the family Bovidae; races of big-horned sheep (*Ovis canadensis*) now or formerly indigenous to this state.

Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora are restricted for the welfare of the animals, except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.

### **Class amphibia (frogs, toads, salamanders)**

- Family Bufonidae (toads): Giant toad or marine toad (*Bufo marinus*)

### **Class Monorhina (lampreys)**

- All species.

### **Class Osteichthyes (bony fishes)**

- Family Serranidae (bass): White perch, Morone or Roccus Americana
- Family Clupeidae (herring): Gizzard shad (*Dorosoma cepedianum*)
- Family Sciaenidae (croakers): Freshwater sheepshead (*Aplodinotus grunniens*)
- Family Characidae (characins): Banded tetra (*Astyanax fasciatus*). All species of piranhas
- Family Lepisosteidae (gars): All species.
- Family Amiidae (bowfins): All species.

### **Class Reptilia (snakes, lizards, turtles, alligators)**

- Family Crocodylidae: All species.

### **Class Crustacea (crustaceans)**

- Genus Cambarus (crayfishes): All species.
- Genus Astacus (crayfishes): All species.
- Genus Astacopsis (crayfishes): All species.

### **Class Gastropoda (slugs, snails, clams)**

- All species of slugs.
- All species of land snails.

Other classes, orders, families, genera, and species of wild animals which may be designated by the commission in cooperation with the Department of Food and Agriculture, (1) when the class, order, family, genus, or species is proven to be undesirable and a menace to native wildlife or the agricultural interests of the state, or (2) to provide for the welfare of wild animals.

Except as expressly authorized in this code, any live nonindigenous Atlantic salmon or the roe thereof into the Smith River watershed.

Classes, families, genera, and species in addition to those listed in this section may be added to or deleted from the above lists from time to time by commission regulations in cooperation with the Department of Food and Agriculture.

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**CFGC 3000.** Birds or mammal, hours for taking. It is unlawful to take any bird or mammal, except a nongame mammal, between one-half hour after sunset and one-half hour before sunrise of the following day at the place of taking, except as otherwise provided in this code or under such regulations as the commission may adopt. The commission may adopt regulations prohibiting the taking of any nongame mammal between one-half hour after sunset and one-half hour before sunrise of the following day at the place of taking.

**CFGC 3001.** Taking birds or mammals when intoxicated. It is unlawful to take birds or mammals with firearms or with bow and arrow when intoxicated.

**CFGC 3002.** Shooting game birds or mammals from boat or other vehicle. It is unlawful to shoot at any game bird or mammal, including a marine mammal as defined in Section 4500, from a powerboat, sailboat, motor vehicle, or airplane.

**CFGC 3003.5.** Pursuing, driving, or herding birds or mammals with boat or other vehicle; exceptions. It is unlawful to pursue, drive, or herd any bird or mammal with any motorized water, land, or air vehicle, including, but not limited to, a motor vehicle, airplane, powerboat, or snowmobile, except in any of the following circumstances:

1. On private property by the landowner or tenant thereof to drive or herd game mammals for the purpose of preventing damage by such mammals to private property.
2. Pursuant to a permit from the department issued under such regulations as the commission may prescribe.
3. In the pursuit of agriculture.

**CFGC 3004.** Discharging firearms or other deadly weapons within 150 yards of buildings unlawful; exceptions. It is unlawful for any person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, to hunt or to discharge while hunting, any firearm or other deadly weapon within 150 yards of any occupied dwelling house, residence, or other building or any barn or other outbuilding used in connection therewith. The 150-yard area is a "safety zone."

**CFGC 3005.** Taking birds or mammals with net, pound, cage, trap, set line or wire, or poison; possession, evidence, exceptions.

**(a)** It is unlawful to take birds or mammals with any net, pound, cage, trap, set line or wire, or poisonous substance, or to possess birds or mammals so taken, whether taken within or without this state, except as provided in this code or, when relating to ongoing mining operations, in accordance with a mitigation plan approved by the department.

**(b) (1)** Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of birds and mammals. When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis.**(2)** Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including ponding of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds. **(3)** The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan shall result in an overall reduction in take of avian or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site-specific basis and may provide for offsite mitigation measures designed to reduce avian mortality. The mine operator shall submit monthly monitoring reports on avian mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures. **(4)** The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved. **(5)** The mining operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of copies, as determined by the department, of the mitigation plan

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for public review.

**(c)** Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section.

**(d)** This section does not apply to the lawful taking of fur-bearing mammals, nongame birds, nongame mammals, or mammals found to be injuring crops or property, to the taking of birds or mammals under depredation permits, to taking by employees of the department acting in an official capacity, or to taking in accordance with the conditions of a scientific or propagation permit by the holder of that permit.

**CFGC 3005.5.** Capture or possession of bird or mammal; regulations. It is unlawful to capture any game mammal, game bird, nongame bird, nongame mammal, or furbearer, or to possess or confine any live game mammal, game bird, nongame bird, nongame mammal, or furbearer taken from the wild, except as provided by this code or regulations made pursuant thereto. Any bird or mammal possessed or confined in violation of this section shall be seized by the department.

The commission may promulgate regulations permitting the temporary confinement of game mammals, game birds, nongame birds, nongame mammals, or furbearers for the purpose of treating the animals, if injured or diseased.

**CFGC 3007.** License or permit; necessity of. Every person who takes any bird or mammal shall procure a license or permit therefor.

**CFGC 3012.** Using recorded or electrically amplified bird or mammal calls. It is unlawful to use any recorded or electrically amplified bird or mammal calls or sounds, or recorded or electrically amplified imitations of bird or mammal calls or sounds, to assist in taking any bird or mammal, except nongame birds and nongame mammals as permitted by regulations of the commission.

**CFGC 3500.** Game birds defined. Resident game birds are: Chinese spotted doves, ringed turtledoves of the family Columbidae, California quail and varieties thereof, Gambel or desert quail, mountain quail and varieties thereof, sooty or blue grouse and varieties thereof, ruffed grouse, sage hens and sage grouse, Hungarian partridges, red-legged partridges including the chukar and other varieties, ring-necked pheasants and varieties, and wild turkeys of the order Galliformes. Migratory game birds are: ducks and geese, coots and gallinules, jacksnipe, western mourning doves, white-winged doves and band-tailed pigeons. References in this code to "game birds" means both resident game birds and migratory game birds.

**CFGC 3501.** Unlawful driving of game birds. It is unlawful to use any powerboat, motor vehicle, or airplane to drive any game bird toward another person with the intent that the other person shall take the bird.

**CFGC 3502.** Unlawful use of mammal. It is unlawful to use any mammal (except a dog) or an imitation of a mammal as a blind in approaching or taking game birds.

**CFGC 3503.** Unlawful destruction of nest or eggs. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.

**CFGC 3504.** Unlawful sale or purchase of game birds. Subject to the provisions of this code permitting the sale of domestically raised game birds, it is unlawful to sell or purchase any game bird or nongame bird or part thereof.

**CFGC 3505.** Unlawful sale or purchase of exotic birds. It is unlawful to take, sell, or purchase any aigrette or egret, osprey, bird of paradise, goura, numidi, or any part of such a bird.

**CFGC 3511.** Fully protected birds.

**(a) (1)** Except as provided in Section 2081.7, fully protected birds or parts thereof may not be taken or possessed at any

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time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected bird, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, and may authorize the live capture and relocation of those species pursuant to a permit for the protection of livestock. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization. **(2)** As used in this subdivision, "scientific research" does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code. **(3)** Legally imported fully protected birds or parts thereof may be possessed under a permit issued by the department.

The following are fully protected birds:

- American peregrine falcon (*Falco peregrinus anatum*).
- Brown pelican ([Pelecanus occidentalis](#)).
- California black rail (*Laterallus jamaicensis coturniculus*).
- California clapper rail (*Rallus longirostris obsoletus*).
- California condor (*Gymnogyps californianus*).
- California least tern (*Sterna albifrons browni*).
- Golden eagle (*Aquila chrysaetos*).
- Greater sandhill crane (*Grus canadensis tabida*).
- Light-footed clapper rail (*Rallus longirostris levipes*).
- Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).
- Trumpeter swan (*Cygnus buccinator*).
- White-tailed kite (*Elanus leucurus*).
- Yuma clapper rail (*Rallus longirostris yumanensis*).

### **CFGC 3513.** Migratory bird treaty act.

It is unlawful to take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act.

### **CFGC 3680.** Taking of Antwerp or homing pigeons.

Any person, other than the owner thereof, who at any time, by any means or in any manner, takes any Antwerp or homing pigeon is guilty of a misdemeanor. However, during the open legal season on bandtailed pigeons, the taking of Antwerp or homing pigeons incidentally with the shooting or taking of wild bandtailed pigeons, is not a violation of this section.

#### **Nongame birds**

### **CFGC 3800.** Nongame birds.

**(a)** All birds occurring naturally in California that are not resident game birds, migratory game birds, or fully protected birds are nongame birds. It is unlawful to take any nongame bird except as provided in this code or in accordance with regulations of the commission or, when relating to mining operations, a mitigation plan approved by the department.

**(b) (1)** Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of

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birds and mammals. When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis. **(2)** Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including ponding of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds. **(3)** The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan alone or in conjunction with regulations adopted by the commission shall result in an overall reduction in take of avian or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site-specific basis and may provide for offsite mitigation measures designed to reduce avian mortality. The mine operator shall submit monthly monitoring reports on avian mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures. **(4)** The mining operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of copies, as determined by the department, of the mitigation plan for public review.

**(c)** The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved.

### **CFGC 3801.** Taking of nongame birds.

Unless otherwise provided by the regulations of the commission the following nongame birds may be taken and possessed by any person at any time, except as provided in Section 3000:

- English sparrows (*Passer domesticus*).
- Starlings (*Sturnus vulgaris*).

### **CFGC 3801.5.** Permitted taking of birds injuring growing crops.

Nongame birds not covered by the Migratory Bird Treaty Act which are found to be injuring growing crops or property may be taken by the owner or tenant of the premises. They may also be so taken by officers or employees of the Department of Food and Agriculture or by federal or county officers or employees when acting in their official capacities pursuant to the provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Landowners and tenants taking birds in accordance with this section are exempt from Section 3007.

### **CFGC 3801.6.** Prohibited possession of carcass, skin or parts.

Except as otherwise provided in this code or regulations made pursuant thereto, it is unlawful to possess the carcass, skin, or parts of any nongame bird. The carcass, skin, or parts of any nongame bird possessed by any person in violation of any of the provisions of this code shall be seized by the department and delivered to a scientific or educational institution.

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**PART 21 -- MIGRATORY BIRD PERMITS**

Subpart D -- Control of Depredating Birds

21.41 Depredation permits.

21.42 Authority to issue depredating orders to permit the killing of migratory game birds.

21.43 Depredation order for blackbirds, cowbirds, grackles, crows and magpies.

21.44 Depredation order for designated species of depredating birds in California.

Subpart D -- Control of Depredating Birds

§21.41 Depredation permits.

(a) Permit requirement. Except as provided in § 21.42 through 21.46, a depredation permit is required before any person may take, possess, or transport migratory birds for depredation control purposes. No permit is required merely to scare or herd depredating migratory birds other than endangered or threatened species or bald or golden eagles.

(b) Applicant procedures. USDA-APHIS-ADC is responsible for making recommendations to the USFWS on the issuance of depredation permits for control of depredating birds. Persons desiring assistance with migratory bird problems should initially contact USDA-APHIS-ADC District Supervisors or their Assistants. The USFWS will not issue depredation permits without input from ADC. Applications for depredation permits shall be submitted to the appropriate Special Agent in Charge (see §13.11(b) of this subchapter). Each such application must contain the general information and certification required by §13.12(a) of this subchapter plus the following additional information:

- (1) A description of the area where depredations are occurring;
- (2) The nature of the crops or other interests being injured;
- (3) The extent of such injury; and
- (4) The particular species of migratory birds committing the injury.

(c) Additional permit conditions. In addition to the general conditions set forth in part 13 of this subchapter B, depredation permits shall be subject to requires, in this section:

- (1) Permittees may not kill migratory birds unless specifically authorized on the permit.
- (2) Unless otherwise specifically authorized, when permittees are authorized to kill migratory birds, they may do so only with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or area described on the permit.
- (3) Permittees may not use blinds, pits, or other means of concealment, decoys, duck calls, or other devices to lure or entice birds within gun range.
- (4) All migratory birds killed shall be retrieved by the permittee and turned over to a Bureau representative or his designee for disposition to charitable or other worthy institutions for use as food, or otherwise disposed of as provided by law.
- (5) Only persons named on the permit are authorized to act as agents of the permittee under authority of the permit.

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(d) Tenure of permits. The tenure of depredation permits shall be limited to the dates which appear on its face, but in no case shall be longer than one year.

[FR 1178, Jan. 4, 1974, as amended at 42 FR 17122, Mar. 31, 1977]

§21.42 Authority to issue depredating orders to permit the killing of migratory game birds.

Upon the receipt of evidence clearly showing that migratory game birds have accumulated in such numbers in a particular area as to cause or be about to cause serious damage to agricultural, horticultural, and fish cultural interests, the Director is authorized to issue by publication in the Federal Register a depredation order to permit the killing of such birds under the following conditions:

- (a) That such birds may only be killed by shooting with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or areas;
- (b) That shooting shall be limited to such time as may be fixed by the Director on the basis of all circumstances involved. If prior to termination of the period fixed for such shooting, the Director receives information that there no longer exists a serious threat to the area or areas involved, he shall without delay cause to be published in the Federal Register an order of revocation;
- (c) That such migratory birds as are killed under the provisions of any depredation order may be used for food or donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, but shall not be sold, offered for sale, bartered, or shipped for purpose of sale or barter, or be wantonly wasted or destroyed: Provided, that any migratory game birds which cannot be so utilized shall be disposed of as prescribed by the Director;
- (d) That any order issued pursuant to this section shall not authorize the killing of the designated species of depredating birds contrary to any State laws or regulations. The order shall specify that it is issued as an emergency measure designed to relieve depredations only and shall not be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated pursuant to section 3 of the Migratory Bird Treat Act.

§21.43. Depredation order for blackbirds, cowbirds, grackles, crows and magpies.

A Federal permit shall not be required to control yellow-headed, red-winged, rusty, and Brewer's blackbirds, cowbirds, all grackles, crows, and magpies, when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance: Provided:

- (a) That none of the birds killed pursuant to this section, nor their plumage, shall be sold or offered for sale, but may be possessed, transported, and otherwise disposed of or utilized.
- (b) That any person exercising any of the privileges granted by this section shall permit at all reasonable times including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.
- (c) That nothing in this section shall be construed to authorize the killing of such birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the State concerned.

[39 FR 1178, Jan. 4, 1974, as amended at 54 FR 47525, Nov. 15, 1989]

§21.44 Depredation order for designated species of depredating birds in California.

In any county in California in which horned larks, golden-crowned, white-crowned and other crowned sparrows, and

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house finches are, under extraordinary conditions, seriously injurious to agricultural or other interest, the Commissioner of Agriculture may, without a permit, kill or cause to be killed under his/her general supervision such of the above migratory birds as may be necessary to safeguard any agricultural or horticultural crop in the county: Provided:

(a) That such migratory birds shall be killed only when necessary to protect agricultural or horticultural crops from depredation; that none of the above migratory birds killed, or the parts thereof, or the plumage of such birds, shall be sold or removed from the area where killed; but that all such dead migratory birds shall be buried or otherwise destroyed within this area, except that any specimens needed for scientific purposes, as determined by the State or the Director shall not be destroyed.

(b) That any Commissioner of Agriculture exercising the privileges granted by this section shall keep records of the persons authorized by the Commissioner to kill such migratory birds, and the estimated number of such birds killed pursuant to the exercise of his authority, and the Commissioner shall submit a report thereof to the Director on or before December 31 of each year or whenever the Director so requests.

[39 FR 1178, Jan. 4, 1974, as amended at 54 FR 47525, Nov. 15, 1989; 55 FR 17352, Apr. 24, 1990]

### PART 22 -- EAGLE PERMITS

22.12 General Restrictions.

22.23 Permits to take depredating eagles.

22.31 Golden eagle depredations control order on request of Governor of a State.

22.32 Conditions and limitations on taking under depredation control order.

§22.12 General restrictions.

No person shall sell, purchase, barter, trade, or offer for sale, purchase, barter, or trade, export or import, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, and no permit will be issued to authorize such acts.

§22.23 Permits to take depredating eagles.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking of depredating bald or golden eagles.

(a) Application procedure. Applications for permits to take depredating bald or golden eagles shall be submitted to the appropriate Special Agent in Charge (See: §13.11(b) of this subchapter). Each such application must contain the general information and certification required by §13.12(a) of this subchapter plus the following additional information:

- (1) Species and number of eagles proposed to be taken;
- (2) Location and description of property where taking is proposed;
- (3) Inclusive dates for which permit is requested;
- (4) Method of taking proposed;
- (5) Kind and number of livestock or domestic animals owned by applicant;
- (6) Kind and amount of alleged damage; and

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(7) Name, address, age, and business relationship with applicant of any person the applicant proposes to act for him as his agent in the taking of such eagles.

(b) Additional permit conditions. In addition to the general conditions set forth in part 13 of this subchapter B, permits to take depredating bald or golden eagles shall be subject to the following conditions:

(1) Bald or golden eagles may be taken under permit by firearms, traps, or other suitable means except by poison or from aircraft;

(2) The taking of eagles under permit may be done only by the permittee or his agents named in the permit;

(3) Any eagle taken under authority of such permit will be promptly turned over to a Service agent or other game law enforcement officer designated in the permit; and

(4) In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within 10 days following completion of the taking operations or the expiration of the permit, whichever occurs first.

(c) Issuance criteria. The Director shall conduct an investigation and not issue a permit to take depredating bald or golden eagles unless he has determined that such taking is compatible with the preservation of the bald or golden eagle. In making such determination the Director shall consider the following:

(1) The direct or indirect affect which issuing such permit would be likely to have upon the wild population of bald or golden eagles;

(2) Whether there is evidence to show that bald or golden eagles have in fact become seriously injurious to wildlife or to agriculture or other interests in the particular locality to be covered by the permit, and the injury complained of is substantial; and

(3) Whether the only way to abate the damage caused by the bald or golden eagle is to take some or all of the offending birds.

(d) Tenure of permits. The tenure of any permit to take bald or golden eagles for depredation control purposes shall be that shown on the face thereof, and shall in no case be longer than 90 days from date of issue.

### Subpart D -- Depredation Control Orders on Golden Eagles

#### §22.31 Golden eagle depredations control order on request of Governor of a State.

(a) Whenever the Governor of any State requests permission to take golden eagles to seasonally protect domesticated flocks and herds in such State, the Director shall make an investigation and if he determines that such taking is necessary to and will seasonally protect domesticated flocks and herds in such States he shall authorize such taking in whatever part or parts of the State and for such periods as he determines necessary to protect such interests.

(b) Requests from the Governor of a State to take golden eagles to seasonally protect domesticated flocks and herds must be submitted in writing to the Director listing the periods of time during which the taking of such birds is recommended, and including a map of the State indicating the boundaries of the proposed area of taking. Such requests should include a statement of the facts and the source of such facts that in the Governor's opinion justifies the request. After a decision by the Director, the Governor will be advised in writing concerning the request and a notice will be published in the Federal Register.

#### §22.32 Conditions and limitations on taking under depredation control order.

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(a) Whenever the taking of golden eagles without a permit is authorized for the seasonal protection of livestock, such birds may be taken by firearms, traps, or other suitable means except by poison or from aircraft.

(b) Any person exercising any of the privileges granted by this subpart D must permit all reasonable times, including during actual operations, any Service agent, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require concerning such operations.

(c) The authority to take golden eagles under a depredations control order issued pursuant to this subpart D only authorizes the taking of golden eagles when necessary to seasonally protect domesticated flocks and herds, and all such birds taken must be reported and turned over to a local Bureau Agent.

Migratory birds in California

Persons desiring assistance with migratory bird problems in California should contact the district supervisor or their assistant with the U.S. Department of Agriculture (USDA)-APHIS-Animal Damage Control (ADC). The U.S. Fish and Wildlife Service (USFWS) will not issue depredation permits without input from ADC.

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**California Attorney General Opinion**

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

BILL LOCKYER  
Attorney General

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OPINION	:	No. 06-109
of	:	January 5, 2007
BILL LOCKYER	:	
Attorney General	:	
SUSAN DUNCAN LEE	:	
Deputy Attorney General	:	

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THE HONORABLE TODD SPITZER, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions:

1. May the Fish and Game Commission or the Department of Fish and Game prohibit a person employed by the association of a common interest development from using air powered pellet projectiles to kill cottontail rabbits that are materially harming landscaping, ornamental plants, or gardens on the property of the association?

2. May a person employed by the association of a common interest development use air powered pellet projectiles to kill cottontail rabbits between one-half hour after sunset and one-half hour before sunrise, and within 150 yards of an occupied residence without the owner's permission, if the rabbits are materially harming landscaping, ornamental plants, or gardens on the property of the association?

**CONCLUSIONS**

1. Neither the Fish and Game Commission nor the Department of Fish and Game may prohibit a person employed by the association of a common interest development from using air powered pellet projectiles to kill cottontail rabbits that are materially harming landscaping, ornamental plants, or gardens on the property of the association.

2. A person employed by the association of a common interest development may use air powered pellet projectiles to kill cottontail rabbits between one-half hour after sunset and one-half hour before sunrise, and within 150 yards of an occupied residence without the owner's permission, if the rabbits are materially harming landscaping, ornamental plants, or gardens on the property of the association, and such use is in conformity with applicable local ordinances.

**ANALYSIS**

We are informed that a common interest development located in Southern California has expansive outdoor common areas landscaped both for aesthetic and recreational enjoyment.<sup>1</sup> For several years the development has experienced widespread damage to its ornamental landscaping due to a large population of cottontail rabbits. Various methods for controlling the rabbits, such as reducing sources of food, fencing, trapping, and using repellents, have been attempted without significant success. No toxic or reproduction-regulating agents are currently approved for use in controlling rabbits in California. The two questions presented for resolution concern whether a pellet gun may be used to control the association's rabbit population. We conclude generally that it may.

**1. Regulatory Authority**

The first question asks whether the Fish and Game Commission ("Commission") or the Department of Fish and Game ("Department") may prohibit a person from using air powered pellet projectiles to kill cottontail rabbits that are materially harming landscaping, ornamental plants, or gardens in a common interest development. We conclude

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<sup>1</sup> A common interest development is a real property development in which a separate interest is coupled with either an undivided interest in all or part of the common area, or with membership in an association that owns all or part of the common area. (Civ. Code, §§ 1351, 1352.) Unless otherwise provided for in the development's governing documents, the association that manages the common interest development, as opposed to the owners of the separate interests, is responsible for maintaining, repairing, and replacing the common areas. (Civ. Code, § 1364, subd. (a).) Thus, the installation and upkeep of landscaping in the common areas is typically the responsibility of the managing association.

that neither the Commission nor the Department may prohibit such activity.

The Constitution specifically provides for the establishment of the Commission, and authorizes the Legislature to delegate powers to the Commission “relating to the protection and propagation of fish and game as the Legislature sees fit.” (Cal. Const., art. IV, § 20, subd. (b).) Among its delegated responsibilities, the Commission regulates the possession and taking of birds, mammals, fish, amphibians, and reptiles (Fish & G. Code, § 200),<sup>2</sup> establishes special hunting seasons for mammals and birds that exist in surplus (§ 325), enters into reciprocal agreements with adjoining states regarding hunting and fishing licenses (§§ 375, 390), and establishes lists of endangered and threatened species (§§ 2050-2079).

The Legislature has also established the Department to administer and enforce the Fish and Game Code (§§ 700-702) in accordance with policies adopted by the Commission (§ 703). The Department’s responsibilities include establishing and maintaining wildlife management areas, ecological reserves, and cooperative hunting areas (§§ 1525-1585), and issuing hunting and fishing licenses under prescribed terms and conditions (§ 1050). The Department’s employees have peace officer powers in enforcing the laws relating to the protection of fish and game. (§ 851.)

In 87 Ops. Cal. Atty. Gen. 42 (2004), we recently concluded that cottontail and brush rabbits may be trapped or killed if it is established that they are materially harming ornamental plants. We stated in part:

“Preliminarily, we note that cottontail and brush rabbits are not threatened or endangered species [citation]; they may be hunted as ‘game mammals’ [citation] and ‘resident small game’ [citation] subject to regulations adopted by the Fish and Game Commission [citation]. We are not concerned in this opinion, however, with the hunting of game mammals but rather with whether, pursuant to specific statutory authorization, cottontail and brush rabbits may be trapped or killed due solely to their eating landscaping, ornamental plants, or gardens.

“.....

“Turning to section 4186, we find that cottontail and brush rabbits may be trapped or killed (‘taken’) at any time when they are causing ‘damage to crops or forage.’ . . .

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<sup>2</sup> All further references to the Fish and Game Code are by section number only.

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“[Food and Agriculture Code] [s]ection 24.5 declares that ‘plants growing in native stands or planted for ornamental purposes . . . shall be considered as a part of the agricultural industry for the purpose of any law that provides for the protection of the agricultural industry from pests.’ . . .

“In this context, then, cottontail and brush rabbits causing material harm to crops must be considered ‘pests’ for purposes of [Food and Agriculture Code] section 24.5. . . .

“ . . . We conclude that cottontail and brush rabbits that are eating landscaping, ornamental plants, or gardens may be trapped or killed if it can be established that they are materially harming such plants.” (*Id.* at pp. 44-47.)<sup>3</sup>

In essence, we reasoned that if rabbits are causing material harm to crops, including ornamental plants, they constitute “pests” rather than “game.” (*Id.* at p. 47.) Consequently, the restrictions on hunting birds and mammals contained in the Fish and Game Code, as implemented and enforced by the Commission and Department, do not apply to the trapping or killing of rabbits as part of a “pest” control effort. No hunting license or other specific authorization from the Commission or the Department is required to control an infestation of rabbits. (*Id.* at p. 46.) By the same token, the Commission and the Department do not have the statutory authority to prohibit the use of pest control methods to eradicate an infestation of rabbits. Such an administrative prohibition by either agency would be in violation of section 4186, which removes the authority of the Commission and Department

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<sup>3</sup> Section 4186 states:

“Nothing in this code prohibits the owner or tenant of land, or any person authorized in writing by such owner or tenant, from taking cottontail or brush rabbits during any time of the year when damage to crops or forage is being experienced on such land. Any person other than the owner or tenant of such land shall have in possession when transporting rabbits from such property written authority from the owner or tenant of land where such rabbits were taken. Rabbits taken under the provision of this code may not be sold.”

to take any action that would prevent a landowner from “taking” cottontail or brush rabbits “during any time of the year” if the rabbits are causing “damage to crops or forage.”<sup>4</sup>

The Commission and Department may only act in compliance with state law. “An administrative agency must act within the powers conferred upon it by law and may not act in excess of those powers.” (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1042; see *Woods v. Superior Court* (1981) 28 Cal.3d 668, 679; *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 295; *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103.) Here, the governing law is section 4186, as discussed in our prior opinion.

We thus conclude in answer to the first question that neither the Commission nor the Department may prohibit a person employed by the association of a common interest development from using air powered pellet projectiles to kill cottontail rabbits that are materially harming landscaping, ornamental plants, or gardens on the property of the association.

## 2. Statutory Restrictions

The second question presented concerns whether a pellet gun may be used either at night or within 150 yards of an occupied residence without the owner’s consent when attempting to control rabbits materially damaging ornamental plants. The question raises the possible application of two Fish and Game Code limitations placed upon hunting. We conclude that while these particular statutory provisions are not applicable, local ordinances may apply regarding the use of a pellet gun to control an infestation of rabbits.

Section 3000 generally prohibits the taking of birds and mammals at night:

“It is unlawful to take any bird or mammal, except a nongame mammal, between one-half hour after sunset and one-half hour before sunrise of the following day at the place of taking, except as otherwise provided in this code or under such regulations as the commission may adopt. The commission may adopt regulations prohibiting the taking of any nongame mammal between one-half hour after sunset and one-half hour before sunrise of the following day at the place of taking.”

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<sup>4</sup> We reject the suggestion that section 4186 precludes only the application of “seasonal” statutory restrictions on hunting when damage to crops or forage is being experienced. Prohibiting pest control efforts without a hunting license, for example, would constitute an unauthorized prohibition against taking rabbits under section 4186 “during any time of the year” that the person is without a license.

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Section 3004 generally prohibits using a firearm or other deadly weapon<sup>5</sup> within 150 yards of an occupied building without the owner's consent:

"It is unlawful for any person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, to hunt or to discharge while hunting, any firearm or other deadly weapon within 150 yards of any occupied dwelling house, residence, or other building or any barn or other outbuilding used in connection therewith. The 150-yard area is a 'safety zone.' "

Sections 3000 and 3004 are limited to the taking of birds and mammals while "hunting." These and other requirements that come under the Commission's and Department's jurisdictions, such as possession of a hunting license (Cal. Code Reg., tit. 14, § 700) and a "bag limit" of five rabbits per day (Cal. Code Reg., tit. 14, § 308), do not govern when the activity is conducted pursuant to some other authorization. We have already concluded that when rabbits are materially harming ornamental plants, they do not constitute "game," but rather constitute "pests." (87 Ops. Cal. Atty. Gen., *supra*, at p. 47.) And, as pests, they are not being "hunted"; they are being controlled and eradicated due to the damage they are causing to crops. Consequently, neither section 3000 nor section 3004 applies to limit the means by which a person may eradicate an infestation of rabbits. As we explained in answer to the first question, section 4186 prevents any application of the terms of section 3000 or section 3004 in a manner that would restrict a landowner from "taking" cottontail or brush rabbits "during any time of year" if the rabbits are causing "damage to crops or forage."

There is, however, an additional consideration, one of constitutional dimension. Under section 7 of article XI of the Constitution, "a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general law." This constitutional power granted to cities and counties, commonly known as the "police power," has been found to be "as broad as the police power exercisable by the Legislature itself," except for its territorial limits and subordination to state law provisions. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140.)

With respect to "state law," the Supreme Court has recognized that "the Legislature has preempted discrete areas of gun regulation rather than the entire field of gun

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<sup>5</sup> While a pellet gun is not a "firearm" (see *People v. Lochtefeld* (2004) 77 Cal.App.4th 533, 535; *People v. Vasquez* (1992) 7 Cal.App.4th 763, 766-768; In re *Jose A.* (1992) 5 Cal.App.4th 697, 700-702; *People v. Malone* (1977) 72 Cal.App.3d 649, 655), it may constitute a "deadly weapon" (see *People v. Lochtefeld*, *supra*, 77 Cal.App.4th at pp. 535-541; *People v. Sherman* (1967) 251 Cal.App.2d 849, 857 [pellet gun used to shoot gophers]).

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control.” (*Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 861.) Here, the Legislature has preempted local control over “the manufacture, sale or possession” of pellet guns. (Gov. Code, § 53071.5; Pen. Code, § 12556, subd. (d)(5), (12).) Accordingly, a city or county may not regulate the manufacture, sale, or possession of pellet guns, but may regulate the *shooting* of pellet guns within its jurisdiction to reflect the needs of the particular community. (See *Nordyke v. King* (2002) 27 Cal.4th 875, 881-885; *Great Western Shows, Inc. v. County of Los Angeles, supra*, 27 Cal.4th at pp. 860-870; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 118-1128.)

We thus conclude in answer to the second question that a person employed by the association of a common interest development may use air powered pellet projectiles to kill cottontail rabbits between one-half hour after sunset and one-half hour before sunrise, and within 150 yards of an occupied residence without the owner’s permission, if the rabbits are materially harming landscaping, ornamental plants, or gardens on the property of the association, and such use is in conformity with applicable local ordinances.

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