

## STAFF SUMMARY FOR JUNE 20-21, 2018

**31. UPLAND (RESIDENT) GAME BIRD (SAGE GROUSE)****Today's Item**Information Action 

Consider adopting proposed changes to upland game bird regulations regarding sage grouse.

**Summary of Previous/Future Actions**

- |                                   |                                    |
|-----------------------------------|------------------------------------|
| • WRC vetting                     | Jan 11, 2018; Santa Rosa           |
| • Notice hearing                  | Feb 7-8, 2018; Sacramento          |
| • Discussion hearing              | Apr 18-19, 2018; Ventura           |
| • <b>Today's adoption hearing</b> | <b>Jun 20-21, 2018; Sacramento</b> |

**Background**

FGC annually considers the recommendations of DFW in establishing upland game bird regulations. Section 300 provides definitions, hunting zone descriptions, season opening and closing dates, and daily bag and possession limits for resident and migratory upland game birds.

For the 2018-2019 season, DFW is presenting a recommendation solely for sage grouse permits based on the spring 2018 lek counts. A lek is a communal area in which two or more male greater sage grouse perform courtship displays to mate with females. DFW performs multiple counts of all known leks in California, including leks within hunt zones and in non-hunted areas. The lek counts are used to estimate population size, and a population model expands the count of males to predict the fall population.

Both the low and high fall population projections for 2018 are considered conservative. The number of permits proposed will not exceed 5% of the projected fall population size, which is among the most conservative scientific recommendations for allowable harvest. In addition to population size, population trajectory is considered in DFWs recommendation, and no permits will be recommended for populations that are in decline and below the long-term average for a hunt zone.

DFW has not recommended issuing permits in either of the Lassen hunt zones since 2012, the South Mono Hunt Zone since 2014, or the North Mono Hunt Zone in 2017, because of concerns about downward population trajectories, and to allow these populations time to recover from the effects of wildfire and drought. The conservative approach to estimating spring populations and projecting fall populations is designed to avoid any errors that could lead to an overestimation of the population size. The low population projection, assuming no reproduction, is not a likely scenario except for the most extreme possible conditions.

The number of permits ultimately recommended for each hunt zone are based on three criteria:

1. Size and trend of the spring breeding population in each hunt zone based on lek counts conducted in Mar and Apr 2018.
2. The allowable harvest level will not exceed 5% of the predicted fall population.

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3. If the allowable harvest in any zone is five or fewer permits, no permits will be recommended for that zone.

**Proposed Regulation**

Based on the results of spring lek counts and population projections for the fall of 2018, DFW is recommending no change to current regulations, maintaining that zero permits be issued for all four of the sage grouse hunting zones in the 2018-2019 season.

DFW's recommendation proposes a no change alternative and, if adopted by FGC, would result in a decision not to proceed. Additionally, if the recommendation is accepted, no action would be required pursuant to CEQA. CEQA does not apply to projects that a public agency rejects or disapproves pursuant to California Public Resources Code subdivision 21080(b)(5).

**Significant Public Comments**

No comments have been received since the opening of the comment period on Feb 20, 2018.

**Recommendation**

**FGC staff:** Do not proceed with the noticed amendment consistent with DFW's recommendation.

**DFW:** No change to the current regulations, which would maintain that zero permits be issued for any of the sage grouse hunting zones in 2018-2019 season.

**Exhibits**

1. [Pre-adoption statement of reasons, received Jun 8, 2018](#)

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission not proceed with the noticed amendment to subsection 300(a)(1)(D)4. regarding upland (resident) game bird (sage grouse) regulations for the 2018-19 season. The Commission further authorizes staff to file a notice of this decision with the Office of Administrative Law.

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STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-adoption Statement of Reasons)  
2018 JUN -8 AM 8:30

Amend subsection (a)(1)(D)4. of Section 300  
Title 14, California Code of Regulations  
Re: Resident Upland Game Bird Hunting Regulations

Re: Upland Game Birds

I. Date of Initial Statement of Reasons: December 28, 2017

II. Date of Pre-adoption Statement of Reasons: June 4, 2018

III. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing:           Date:           February 8, 2018  
  Location:       Sacramento, CA

(b) Discussion Hearing:       Date:           April 19, 2018  
  Location:       Ventura, CA

(c) Adoption Hearing:        Date:           June 21, 2018  
  Location:       Sacramento, CA

IV. Description of Modification of Originally Proposed Language of Initial Statement of Reasons:

Based on the results of spring lek counts and population projections for the fall of 2018, the Department recommends no change to current regulations, maintaining that 0 (zero) permits be issued for any of the sage grouse hunting zones in 2018-2019 season.

The permits under subsection 300 (a)(1)(D)4. will remain:

East Lassen:	0 (2-bird) permits
Central Lassen:	0 (2-bird) permits
North Mono:	0 (1-bird) permits
South Mono:	0 (1-bird) permits

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

In the spring of 2018, the Department conducted lek counts in all four hunt zones (Table 1). Table 1 contains the 2018 lek counts with comparison to 2017 and 2012, which was at the onset of the drought and following the Rush Fire, both of which had a large impact to sage grouse habitats. Additionally, a projected low fall population range is provided based on modeling of lek counts, which

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represents the predicted size of the population during the hunting season.

Spring lek counts declined in East Lassen and remained about the same in Central Lassen and South Mono. Each of these 3 zones remain significantly down since 2012 following prolonged drought conditions and a severe winter in 2016-2017. No permits have been issued in either Lassen zone since the Rush Fire in 2012, with populations 55-60% below pre-fire levels. Additionally, no permits have been issued in the South Mono Hunt Zone since 2013, which has declined an estimated 64% since 2012. The Department is recommending 0 permits for these three zones again in 2018 (Table 1).

While counts in the North Mono zone increased from 2017 to 2018, access was compromised by the winter conditions that persisted into the lek count season of 2017 which could have resulted in underestimates for that year. Access to North Mono, and the resulting count, was good in 2018, showing this population may be doing a little better than anticipated after the 2017 lek counts. Regardless, overall lek counts remain 39% below 2012 numbers and the Department is again recommending 0 permits for the North Mono Zone in 2018 (Table 1).

Table 1. 2018 Sage grouse lek counts, percent change from 2012, projected fall population size, and proposed permit allocations.

Hunt Zone	2012 Males	2017 Males	2018 Males	Change From 2012	Projected Low Fall Population 2018	2017 Permits	2018 Proposed Permits
East Lassen	393	195	157	-60%	294	0	0
Central Lassen	199	92	90	-55%	168	0	0
North Mono	510	271	312	-39%	597	0	0
South Mono	418	159	152	-64%	284	0	0

### Update: Recent court finding regarding Bi-State Distinct Population Segment

In 2013, the U.S. Fish and Wildlife Service (USFWS) proposed to list the greater sage-grouse Bi-State Distinct Population Segment (DPS), which includes the two Mono zones, as threatened under the Endangered Species Act (ESA). In 2015, the USFWS further determined that conservation efforts established in the Bi-State DPS were effective in reducing the threats to the species and that listing was no longer warranted.

A lawsuit filed by the Center for Biological Diversity, WildEarth Guardians, and Western Watersheds in a federal court challenged the USFWS' decision not to list the DPS. On May 15, 2018, the court issued an order invalidating the Service's 2015 decision to withdraw the proposed listing of the DPS and ordered the parties to develop a schedule to provide a briefing addressing an appropriate remedy. Thus, pursuant to the order, and assuming no party appeals, the USFWS will be reconsidering its decision to withdraw the proposed listing and in the future, might list the DPS as threatened pursuant to the ESA. Such a listing could limit the Commission's ability to authorize sage grouse hunting.

### Continuing Conservation Efforts: Translocation Activities

As part of the conservation efforts established in the Bi-State DPS, the Department received a Section 6 ESA grant, to conduct a translocation of sage-grouse to the Parker Bench sub-population which is outside of either hunt zone. As part of the large conservation strategy developed by the Technical Advisory Committee for the Bi-State DPS, sage grouse from the North Mono Zone are being actively translocated to supplement this population which is at risk or extirpation. The ongoing efforts to translocate grouse from North Mono to the Parker subpopulation in an effort to increase sage grouse across the landscape are an additional consideration in recommending 0 permits for the North Mono Hunt Zone.

## Updated Informative Digest/Policy Statement Overview

Current regulations in Section 300, Title 14, California Code of Regulations (CCR), provide general hunting seasons for taking resident and migratory upland game birds, including sage grouse. A limited number of hunting permits are issued for greater sage grouse, and that number is based on annual population surveys. For the 2018-2019 season, the Department of Fish and Wildlife (Department) will present the Commission a final recommendation for permits based on the spring 2018 lek counts, which means the Commission will notice a possible range, and adopt final permit numbers based on the final lek counts.

The Department is recommending the following regulation changes:

Amend subsection 300(a)(1)(D)4. to adjust the annual number of General Season greater sage grouse hunting permits by zone for the 2018-2019 season.

### Benefits of the Proposed Regulations

Adoption of sustainable upland game seasons, bag and possession limits, and authorized methods of take provides for the maintenance of sufficient populations of upland game birds to ensure their continued existence.

### Non-monetary Benefits to the Public

The Commission anticipates benefits to the health and welfare of California residents through the sustainable management of sage grouse populations. The Commission does not anticipate non-monetary benefits to worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

### Consistency and Compatibility with Existing Regulations

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to Section 300 are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate hunting regulations.

### Update:

**Based on the results of spring lek counts and population projections for the fall of 2018, the Department is recommending no change to current regulations, maintaining that 0 (zero) permits be issued for all four of the sage grouse hunting zones in 2018-2019 season.**