

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Eduardo Garcia, Chair

AB 645 (Gallagher) – As Amended March 11, 2021

**SUBJECT:** Fish and wildlife: poaching: penalties: probation period

**SUMMARY:** Extends the period of probation that may be granted to a maximum of three years for specific violations of the Fish and Game Code (FGC). Specifically, **this bill:**

- 1) Allows a maximum probation of three years for the following violations:
  - a) Illegal take or possession of wildlife for profit or personal gain;
  - b) Illegal take or possession in the field of more than three times the daily bag limit, or three times the legal possession limit;
  - c) Violations, as specified, that involve trophy deer, elk, antelope, bighorn sheep, or wild turkey; and,
  - d) Illegal sale or purchase of abalone.
- 2) Imposes a state-mandated local program by changing the penalty for a crime or infraction, but provides that no reimbursement is required by this bill.

**EXISTING LAW:**

- 1) States that the fish and wildlife resources of the state are held in trust for the people of the state by and through the Department of Fish and Wildlife (DFW) (FGC § 711.7).
- 2) Makes any violation of the FGC a misdemeanor, unless expressly provided otherwise (FGC § 12000).
- 3) Restricts the period of probation for a misdemeanor to no longer than one year, unless the offense includes specific probation lengths within its provisions [Penal Code § 1203(a)].
- 4) Makes it unlawful to possess a bird, mammal, fish, reptile, amphibian, or part of any of those animals, taken in violation of the FGC (FGC § 2002).
- 5) Establishes a penalty of \$15,000 to \$40,000 for the illegal take, or sale or possession by an unlicensed individual, of abalone [FGC § 12002.3 (b); FGC § 12006.6].
- 6) Establishes a penalty of \$5,000 to \$40,000, or imprisonment in the county jail for no more than a year, or both a fine and imprisonment, for the illegal take, possession, importation, exportation, sale, purchase, barter, trade, or exchange of a bird, fish, mammal, reptile, amphibian, or part of any of those animals, for profit or personal gain (FGC § 12012).
- 7) Establishes a penalty of \$5,000 to \$40,000, or imprisonment in the county jail for no more than a year, or both a fine and imprisonment, for illegally taking or possessing in the field more than three times the daily bag limit, or possessing more than three times the legal possession limit, of fish, reptiles, birds, amphibians, or mammals (FGC § 12013).

- 8) Prescribes enhanced penalties for specified violations that involve trophy deer, elk, antelope, bighorn sheep, or wild turkey (FGC § 12013.3).
- 9) Defines probation as the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer [Penal Code § 1203(a)].

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this Bill.** According to the author,

California has made a lot of progress over the last decade to combat poaching through penalty enhancements for the most egregious violations. Unfortunately, a recent change in state law could undo a lot of this progress by limiting probation to one year, even for serious poaching violations. (This bill) would help protect California's fish and wildlife by ensuring deterrents for the worst offenders are restored.

- 2) **Background.** Poaching is the illegal take of fish and wildlife. It can involve hunting or fishing out of season, the taking of more fish or game animals than the law allows, or illegal commercialization of wildlife. It can also include trespassing, hunting, or fishing in closed areas such as Marine Life Protection Areas or Game Reserves. According to the DFW website, all species of wildlife in California are affected. Some of the most commonly poached species include deer, bear, antelope, elk, abalone, sturgeon, salmon, crab, and lobster.

In the last twenty years, the Legislature has taken several actions to increase penalties for the most egregious poaching crimes. In 2000, AB 2941 increased the maximum penalty by \$10,000 for the illegal sale or purchase of abalone. In 2009, the Legislature passed AB 708 to significantly increase fines for the illegal take of wildlife for profit or personal gain, as well as fines for possessing more than three times the daily bag limit. AB 1162 (2012) increased penalties for the illegal take of trophy animals.

These changes were made due to an increase in poaching around that time. It was believed that the fines and penalties in place for poaching violations were insufficient to serve as an effective deterrent; many violators were fined only very small amounts, which were not enough to deter a poacher that financially profits from the illegal activity.

*Most states are members of the Interstate Wildlife Violator Compact.* This compact was created in the 1980s and ensures a means through which party states can issue and enforce wildlife citations. The Compact includes reciprocity provisions, so that if an individual's license is suspended by a member state, their license can also be suspended in their home state and other member states. This ensures that individuals are not simply able to cross state lines to get around hunting restrictions.

*Recent Changes in State Law Limit Probation Length.* In 2020, the Legislature passed AB 1950, which went into effect on January 1, 2021, and reduces the maximum probation from three years to one year for all misdemeanor crimes. This limit does not apply if a specific probation length is included in statute for a crime. This one year limit includes misdemeanor

poaching violations, as a specific probation length is not included in the FGC. This bill specifies a maximum probation period of 3 years for specific poaching crimes.

Prior to AB 1950, there are examples of poaching prosecutions where individuals convicted of serious poaching crimes have been sentenced to probation for three years. This probation period often includes a prohibition on hunting or fishing for up to three years. The option of a longer probationary period may act as a deterrent, and also help to ensure that penalty assessments can be collected following convictions.

For example, a person pled no contest in El Dorado Superior Court in early 2020 to one misdemeanor count of taking deer over bait. Because the buck was of trophy size, the penalties for the crime were enhanced. The individual will serve three years' probation, during which time they will be prohibited from hunting. They also forfeited all seized items and paid a fine of \$17,500. In 2018, the settlement of three abalone poaching cases included probation terms of three years, in addition to other fines and penalties.

- 3) **Policy Consideration.** The Committee may want to consider if undoing the restriction on maximum probation length put in place by AB 1950 is premature, as it is not clear that an increase in poaching or an inability to secure convictions for the misdemeanors covered by the this bill have occurred since AB 1950 became law on January 1, 2021.
- 4) **Arguments in Support.** Those in support argue that this bill protects and reinstates penalties as outlined in the Fish and Game Code, and gives the judicial system the authority and options needed to appropriately penalize the most egregious poachers who take wildlife illegally.
- 5) **Prior and Related Legislation.**

AB 1950 (Kamalager), Chapter 328, Statutes of 2020, establishes a maximum 1-year probation for all misdemeanor violations unless the offense includes specific probation lengths within its provisions.

AB 1162 (Chesbro), Chapter 590, Statutes of 2012, increases the penalties for poaching involving trophy hunting.

AB 708 (Huffman), Chapter 290, Statutes of 2009, increases the penalties for serious poaching violations by establishing minimum fines and increasing maximum penalties for poaching committed for profit or personal gain, or for taking or possessing three times the legal bag limit or legal possession limit.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Black Brant Group, the  
 CAL-ORE Wetlands and Waterfowl Council  
 California Bowmen Hunters/State Archery Association  
 California Chapter Wild Sheep Foundation  
 California Deer Association  
 California Fish & Game Warden Supervisors and Managers Association

California Hawking Club  
California Houndsmen for Conservation  
California Rifle and Pistol Association, Inc.  
California Sportsman's Lobby, Inc.  
California Waterfowl Association  
Congressional Sportsmen's Foundation  
Defenders of Wildlife  
Mountain Lion Foundation  
Nor-Cal Guides and Sportsmen's Association  
Outdoor Sportsmen's Coalition of California  
Rocky Mountain Elk Foundation  
Safari Club International, California Chapters  
Safari Club International, San Francisco Bay Area Chapter  
San Diego County Wildlife Federation  
Suisun Resource Conservation District  
Tulare Basin Wetlands Association

**Opposition**

None on file

**Analysis Prepared by:** Keith Cialino / W., P., & W. / (916) 319-2096