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## Chapter 595: Banning the Use of Dogs to Hunt Bears and Bobcats

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## *Fish and Game*

### **Chapter 595: Banning the Use of Dogs to Hunt Bears and Bobcats**

*Sean D. O'Dowd*

#### *Code Sections Affected*

Fish and Game Code §§ 3032, 3960.2, 3960.4, 3960.6 (new), § 3960 (amended), § 4756 (repealed).  
SB 1221 (Lieu); 2012 STAT. Ch. 595.

#### I. INTRODUCTION

In 1922, the last California Grizzly was shot and killed in Tulare County, just south of Yosemite National Park.<sup>1</sup> Confrontations with early settlers led to heavy hunting of the bear at a time before the existence of wildlife regulations.<sup>2</sup> Today, the grizzly's fate is a poignant reminder of the dangers associated with unregulated hunting,<sup>3</sup> although the grizzly is certainly not alone.<sup>4</sup>

Like grizzlies, black bears were freely killed in California until 1948, when preliminary regulations established a hunting season as well as a limit on how many could be hunted legally.<sup>5</sup> Bobcats were similarly unprotected until the legislature granted the animal greater protections in 1971.<sup>6</sup> Although these protections came too late to save the grizzly,<sup>7</sup> black bears and bobcats have since flourished.<sup>8</sup>

1. *Bears*, NAT'L PARK SERVICE, <http://www.nps.gov/yose/naturescience/bears.htm> (last visited June 9, 2012) (on file with the *McGeorge Law Review*).

2. *See History and Culture*, CAL. ST. LIBR., <http://www.library.ca.gov/history/symbols.html> (last visited June 13, 2012) (on file with the *McGeorge Law Review*) (noting that the last grizzly was killed more than twenty years before the authority to regulate hunting was granted by the legislature).

3. *See id.* (describing the events that lead to the extinction of the California Grizzly).

4. *See, e.g., Black Bear Management and Harvest*, CAL. DEP'T OF FISH & GAME, <http://www.dfg.ca.gov/wildlife/hunting/bear/mgmtandharvest.html> (last visited June 9, 2012) (on file with the *McGeorge Law Review*) (describing the lack of regulations on the hunting of black bears during much of the first half of the twentieth century).

5. *Id.*

6. JESUS R. GARCIA, CAL. DEP'T OF FISH & GAME WILDLIFE, BOBCAT HARVEST ASSESSMENT 2010–11, at 2 (2011) (on file with the *McGeorge Law Review*). “Prior to 1971, the bobcat . . . was a non-protected mammal, and there were no restrictions on its take. In 1971, [however, the bobcat] was given non-game status by the California Legislature.” *Id.*

7. *See History and Culture*, *supra* note 2 (noting that the last California grizzly was killed more than twenty years before the authority to regulate hunting was granted by the legislature).

8. *See Black Bear Management and Harvest*, *supra* note 4 (crediting changes in the regulations as a factor allowing the black bear population to increase in size); *see also* GARCIA, *supra* note 6, at 2 (noting that although there was public concern regarding bobcat populations in the early 1970s, the bobcat population was

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Today, there are between 25,000 and 30,000 black bears in California, twice the number that existed in 1982.<sup>9</sup> Bobcats enjoy an even more robust population, with an estimated 70,000 animals statewide.<sup>10</sup> These burgeoning populations have allowed sport hunting of black bears and bobcats to continue, transforming the practice into an effective and necessary form of wildlife management, instead of just a threat.<sup>11</sup>

Nevertheless,<sup>12</sup> Chapter 595 now limits bear and bobcat hunting in California by banning the use of dogs<sup>13</sup>—a popular practice and longstanding tradition among hunters.<sup>14</sup>

## II. LEGAL BACKGROUND

California law deems all wild animals and fish in the state to be property of the state's residents.<sup>15</sup> This principle of common ownership grants the state the right and the power to protect and preserve its fish and game “for the common use and benefit” of all the state's people,<sup>16</sup> and to hold it “in trust for the public.”<sup>17</sup> The California Constitution expressly affords the legislature the power to protect California's wildlife,<sup>18</sup> providing it the “most extensive powers over the fish and game within its jurisdiction.”<sup>19</sup>

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estimated at around 72,000 by 1979).

9. *Black Bear Population Information*, CAL. DEP'T OF FISH & GAME, <http://www.dfg.ca.gov/wildlife/hunting/bear/population.html> (last visited June 9, 2012) (on file with the *McGeorge Law Review*).

10. Don Thompson, *Senate Votes to Ban Bear, Bobcat Hunting with Dogs*, ASSOCIATED PRESS STATE & LOCAL WIRE, May 21, 2012.

11. See CAL. DEP'T OF FISH & GAME, BLACK BEAR MANAGEMENT PROGRAM 23 (1998) [hereinafter BLACK BEAR MANAGEMENT PROGRAM] (recommending an increase in bag limits, season lengths, and hunting methods “if these changes are supported by biological data”); see also DAVID S. ZEZULAK & ROBERT G. SCHWAB, DEP'T OF INTERIOR, BUREAU OF LAND MGMT., BOBCAT BIOLOGY IN A MOJAVE DESERT COMMUNITY 22 (1980) (“In the absence of artificially induced mortality some form of natural population regulation *must* occur.” (emphasis added)).

12. In 2010, the Department of Fish and Game recommended eliminating cap limits, expanding hunting zones, and even allowing hunters to equip their dogs with GPS devices in order to better manage the bear population in California. Carla Hall, *California Considers Easing Rules on Black Bear Hunting*, L.A. TIMES (Apr. 19, 2010), <http://articles.latimes.com/2010/apr/19/local/la-me-0420-bear-hunting-20100420> (on file with the *McGeorge Law Review*). Officials claimed the proposals were necessary because “California's black bear population is flourishing and spreading.” *Id.*

13. CAL. FISH & GAME CODE § 3960(b) (amended by Chapter 595); *id.* § 4756 (repealed by Chapter 595).

14. See Thompson, *supra* note 10 (offering that hounds have been used to tree bears for “hundreds of years across the U.S. and Europe”).

15. *Arroyo v. California*, 34 Cal. App. 4th 755, 762, 40 Cal. Rptr. 2d 627, 631 (2d Dist. 1995).

16. *People v. Stafford Packing Co.*, 193 Cal. 719, 727, 227 P. 485, 488 (1924).

17. *People v. Murrison*, 101 Cal. App. 4th 349, 360, 124 Cal. Rptr. 2d 68, 76 (3d. Dist. 2002).

18. CAL. CONST. art. IV, § 20(a).

19. *In re Makings*, 200 Cal. 474, 481, 253 P. 918, 921 (1927).

*McGeorge Law Review / Vol. 44**A. Authority of Legislative and Regulatory Bodies*

In exercising its powers, the legislature has declared that it is the state's policy "to encourage the preservation, conservation, and maintenance of [California's] wildlife resources . . . ."<sup>20</sup> The legislature specifically enumerates several objectives to achieve this goal,<sup>21</sup> including "maintain[ing] diversified recreational uses of wildlife, [such as] the sport of hunting . . . ."<sup>22</sup>

In order to achieve its objectives, the legislature has delegated some powers to the Fish and Game Commission (Commission),<sup>23</sup> a state agency.<sup>24</sup> The Commission may enact regulations concerning the management of the state's wildlife, including the sport of hunting.<sup>25</sup> For example, the Commission may establish seasons in which certain species may be hunted,<sup>26</sup> establish limits on how many may be taken,<sup>27</sup> as well as "[p]rescribe the manner and the means of [the] taking" itself.<sup>28</sup> "When adopting [such] regulations . . . , the [C]ommission . . . consider[s] certain factors, including] population[], habitat, [and] food suppl[y],"<sup>29</sup> and may even create special hunting seasons for species with a population surplus.<sup>30</sup>

While it is the Commission's duty to regulate hunting in California, it is the responsibility of the California Department of Fish and Game (Department) to enforce the Commission's regulations and other laws promulgated by the legislature.<sup>31</sup> For example, the Department oversees the process to obtain a hunting license<sup>32</sup>—the state's threshold requirement to hunt birds or mammals.<sup>33</sup> The Department also issues hunting tags or permits,<sup>34</sup> which may be required in addition to a license, depending on the manner of hunting and the specific game sought.<sup>35</sup>

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20. CAL. FISH & GAME CODE § 1801 (West 1998).

21. *Id.* § 1801(a)–(h).

22. *Id.* § 1801(e).

23. *Id.* § 200. The legislature's delegation of powers is specifically provided for in the California Constitution. CAL. CONST. art. IV, § 20(b).

24. *Wildlife Alive v. Chickering*, 18 Cal. 3d 190, 203, 553 P.2d 537, 544 (1976).

25. FISH & GAME § 202.

26. *Id.* § 203(a).

27. *Id.* § 203(b).

28. *Id.* § 203(d).

29. *Id.* § 203.1.

30. *Id.* § 325.

31. *Id.* § 702.

32. *Id.* § 1050(a) (West Supp. 2012).

33. *Id.* § 3007.

34. *Id.* § 1050(a).

35. *See, e.g., id.* § 4750 (West 1998) (stating that it is "unlawful to take any bear . . . without first procuring a tag"); *see also id.* § 4751 (allowing only licensed hunters to purchase bear tags). The Department issues tags, in addition to requiring a hunting license, for the simple purpose of monitoring the number of bears taken "to determine the overall success rate" of each year's hunt. BLACK BEAR MANAGEMENT PROGRAM, *supra*

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### B. The Taking of Bears and Bobcats

One adult bear may be taken<sup>36</sup> in California for each hunting license issued,<sup>37</sup> subject to both geographical<sup>38</sup> and seasonal<sup>39</sup> restrictions. A hunter must also obtain a bear tag,<sup>40</sup> which must be filled out and immediately returned<sup>41</sup> upon the killing of any bear.<sup>42</sup> Even if unsuccessful, hunters must still return their bear tags to the Department.<sup>43</sup>

Although considered a “nongame mammal,”<sup>44</sup> bobcats may be taken under either a trapping license or a valid hunting license and issued bobcat tags.<sup>45</sup> While bobcat hunting is subject to seasonal limitations,<sup>46</sup> they may be taken anywhere in the state.<sup>47</sup> Under a trapping license, there is no limit of how many bobcats may be taken,<sup>48</sup> while a maximum of five bobcats may be taken per season with a valid hunting license and bobcat tags.<sup>49</sup> Similar to bear hunting procedures, hunters must send their bobcat tags to the Department upon a successful harvest.<sup>50</sup> It is unclear, however, whether hunters must also return their tags in the event they are unsuccessful.<sup>51</sup>

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note 11, at 17. The tags help the Department determine long-term hunting trends. *Id.*

36. Defined as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.” FISH & GAME § 86.

37. CAL. CODE REGS. tit. 14, § 365(c) (2012).

38. *Id.* § 365(a).

39. *Id.* § 365(b).

40. FISH & GAME § 4750.

41. CAL. CODE REGS. tit. 14, § 708.12(e)(1).

42. *Id.* § 708.12(a)(5).

43. *Id.* § 708.12(e)(2).

44. See FISH & GAME § 4150 (defining “nongame animals” as “[a]ll mammals occurring naturally in California which are not game mammals, fully protected mammals, or fur-bearing mammals”); see also *id.* § 3950 (specifying “game mammals” as “deer . . . , elk . . . , prong-horned antelope . . . , wild pigs, . . . bears . . . , mountain lions . . . , jackrabbits and various [types of rabbits] . . . tree squirrels,” and bighorn sheep); *id.* § 4000 (West Supp. 2012) (labeling fur-bearing mammals as “pine marten, fisher, mink, river otter, gray fox, red fox, kit fox, raccoon, beaver, badger, and muskrat”).

45. CAL. CODE REGS. tit. 14, § 478.

46. *Id.* § 478(a)(2), (b)(2).

47. *Id.* § 478(a)(1), (b)(1).

48. *Id.* § 478(c)(2).

49. *Id.* § 478(c)(1).

50. *Id.* § 478.1(c).

51. See *id.* § 478.1(c) (noting that the Commission specifies the process for returning tags upon a successful bobcat hunt; however, the regulation fails to state whether the tags must be returned if a hunt is unsuccessful).

*McGeorge Law Review / Vol. 44**C. The Use of Dogs*

Subject to certain limitations, using dogs to hunt (or train to hunt) mammals is generally permissible throughout the year,<sup>52</sup> except in designated “Dog Control Zones.”<sup>53</sup> Dogs, however, are not permitted to pursue a mammal during said mammal’s closed hunting season.<sup>54</sup> Another limitation prohibits the use of dogs “to pursue . . . protected, rare, or endangered mammal[s] . . . .”<sup>55</sup> For example, hunters cannot use dogs to pursue “elk, bighorn sheep[,] . . . antelope,”<sup>56</sup> or mountain lions<sup>57</sup> at any time in California.<sup>58</sup>

Under prior law, hunters were able to use dogs to pursue both bears<sup>59</sup> and bobcats.<sup>60</sup> Dogs were even allowed to pursue bobcats for training purposes outside the open hunting season,<sup>61</sup> although hunters could not train dogs for bear hunting outside the bear hunting season.<sup>62</sup> If a licensed hunter used a dog to kill a bear, he or she was required to indicate so on their bear license tag.<sup>63</sup>

## III. CHAPTER 595

Chapter 595 bans the use of dogs “to pursue . . . bear[s] or bobcat[s] at any time” in California.<sup>64</sup> However, a hunter may use three or less dogs “to pursue bears or bobcats [under] a depredation permit<sup>65</sup> issued by the [D]epartment, [but only] if [certain] conditions are met.”<sup>66</sup> Also, the Department may authorize the

52. *See id.* § 265(b)(2) (stating that the use of dogs “outside of the dog control zones is permitted year-round, except for closures and restrictions described in this Section 265 and section 364, and the provisions of [Fish and Game Code] sections 3960 and 4800”).

53. *See id.* § 265(b)(1) (defining “Dog Control Zones” as “zones described in subsections 265(a)(4)(A), (B), (C), and (D)” and limiting the use of dogs from “the opening day of the general deer season through the first Friday in April”).

54. CAL. FISH & GAME CODE § 3960 (West 1998).

55. *Id.*

56. CAL. CODE REGS. tit. 14, § 265(a)(2).

57. FISH & GAME § 4800 (West Supp. 2012).

58. *See id.* § 3960 (West 1998) (allowing the use of dogs to pursue mammals, so long the season is not closed, the mammal is not “fully protected, rare, or endangered,” and the mammal is not in a “refuge or ecological reserve”).

59. *See id.* § 4756 (repealed by Chapter 595) (allowing “[t]he use of one dog per hunter . . . for the hunting of bears during [the open deer season]” and “more than one dog per hunter . . . during the open season on bears”).

60. *See* CAL. CODE REGS. tit. 14, § 265(b)(4) (permitting nongame mammals to “be taken with the aid of dogs during the appropriate open season”).

61. *Id.* § 265(b)(6)(F)(3).

62. *Id.* § 265(b)(6)(E).

63. *Id.* § 708.12(c).

64. FISH & GAME § 3960(b) (amended by Chapter 595); *id.* § 4756 (repealed by Chapter 595).

65. CAL. CODE REGS. tit. 14, § 401 (allowing a “property owner or tenant” to apply for a permit to take certain animals that are “damaging or destroying . . . land or property”).

66. FISH & GAME § 3960.2(b) (enacted by Chapter 595).

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“use [of] dogs to pursue bears or bobcats for . . . scientific research,”<sup>67</sup> and in certain situations, will not prohibit dogs from pursuing bears or bobcats if necessary to protect crops or livestock.<sup>68</sup>

### IV. ANALYSIS

Section 1801 of the California Fish and Game Code outlines California’s policy to “encourage the preservation, conservation, and maintenance of wildlife resources.”<sup>69</sup> To achieve these goals, the legislature has listed several objectives, including: (1) allowing for recreational uses for wildlife, such as sport hunting;<sup>70</sup> (2) maintaining sufficient wildlife populations;<sup>71</sup> and (3) providing economic benefits to the citizens of the state.<sup>72</sup> However, instead of furthering these objectives, Chapter 595 limits a popular form of sport hunting, hampering its effectiveness as a wildlife management tool, and potentially severing a steady revenue stream generated through hunting license fees.<sup>73</sup>

#### A. Hound Hunting as a “Sport”

Because California bear and bobcat populations are healthy, the legislature encourages the sport hunting of both.<sup>74</sup> In fact, the continuation of sport hunting is a policy consideration specifically enumerated in section 1801(f).<sup>75</sup> In enacting Chapter 595, however, Senator Lieu, the legislation’s author, argued against hound hunting on the grounds that the practice was inhumane and unsporting.<sup>76</sup> Hunters disagree.<sup>77</sup>

In fact, there is evidence to suggest that hound hunting is *more* humane than other permissible forms of sport hunting.<sup>78</sup> For example, when a hunter chases a

67. *Id.* § 3960.4(b) (enacted by Chapter 595).

68. *Id.* § 3960.6(b) (enacted by Chapter 595).

69. *Id.* § 1801 (West 1998).

70. *Id.* § 1801(e).

71. *Id.* § 1801(a).

72. *Id.* § 1801(f).

73. *See, e.g.*, Bill Gaines, *Bill Gaines: CON on SB 1221—Don’t Take Next Step in Banning All Hunting in California*, L.A. DAILY NEWS (May 22, 2012), [http://www.dailynews.com/opinions/ci\\_20663605/bill-gaines-con-sb-1221-dont-take-next](http://www.dailynews.com/opinions/ci_20663605/bill-gaines-con-sb-1221-dont-take-next) (on file with the *McGeorge Law Review*) (warning that Chapter 595 “sets a terrible precedent” undermining hunting as a “proven model of [wildlife] management”).

74. *See* FISH & GAME § 1801(f) (recognizing the economic and ecological contributions of sport hunting).

75. *Id.*

76. Thompson, *supra* note 10.

77. Gaines, *supra* note 73.

78. *See* Thompson, *supra* note 10 (quoting Republican Senator Doug La Malfa, stating that shooting tree bears is actually more humane because cleaner shots “results in fewer wounded bears that can escape”); *see also* George Skelton, *Let the Dogs Loose on Uncontrolled Bears: A Law Barring Hunting of Animals with Dogs Should Be Vetoed*, L.A. TIMES, Sept. 10, 2012, at A2 (chronicling the alternative, that hunting from a

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bear or a bobcat up a tree, the hunter can determine the animal's age or sex before deciding whether to shoot it.<sup>79</sup> Such an option is not as easy when shooting from a distance.<sup>80</sup> This is why hunters contend that hound hunting is the only form of "catch and release" hunting that exists today.<sup>81</sup>

In addition to being humane, hunters contend that hound hunting is sporting—that it is an incredibly strenuous and physically demanding activity for dogs and hunters alike.<sup>82</sup> Often times, dogs will track a bear with a hunter following closely behind.<sup>83</sup>

Hound hunting is also competitive inasmuch as it remains challenging to track and successfully take a bear or bobcat using dogs.<sup>84</sup> The fact that hound hunting may be an easier way to take a bear or bobcat (as opposed to waiting patiently in a blind) should not diminish the activity's competitive nature.<sup>85</sup> In fact, other forms of hound hunting are still expressly permitted in California.<sup>86</sup> For example, it is still lawful to hunt ring-necked pheasants with dogs in California.<sup>87</sup> To some, there is little difference between flushing a pheasant out of the brush and flushing a bear or bobcat up a tree.<sup>88</sup>

*B. Hound Hunting as Effective Wildlife Management*

California's first hunting laws and regulations were designed to prevent overhunting in order to preserve animal species "for their intrinsic and ecological

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distance often results in missed shots, leaving the animal crippled and wounded to "stumble[] off into the woods to die miserably"). *But see* Dan Noyes, *Hunters Face Bear Hound Ban*, ABC7 (Apr. 24, 2012), <http://abclocal.go.com/kgo/story?section=news/iteam&id=8632914> (on file with the *McGeorge Law Review*) (admitting that hounds, although rare, "sometimes catch the bobcat or bear, including the young, before they make it up a tree").

79. Skelton, *supra* note 78.

80. *Id.*

81. Peter Fimrite, *Sportsman Battles to Keep Hounds*, S.F. GATE (Sept. 7, 2012), <http://www.sfgate.com/science/article/Sportsman-battles-to-keep-hounds-hunting-3849252.php> (on file with the *McGeorge Law Review*).

82. *See* Hall, *supra* note 12 (recognizing that it takes incredible endurance to keep pace with a pack of hunting dogs while in pursuit).

83. *Id.*; *see also* *Bear Hunting: Leash the Hounds*, L.A. TIMES, Apr. 24, 2012, at 10 (noting support for hound hunting by groups such as the American Kennel Club, whose officials say that it "is a sporting, athletic endeavor for hunters and hounds alike").

84. *See* Patrick McGreevy, *California Bill Would Outlaw Hunting of Bears, Bobcats with Dogs*, L.A. TIMES (Aug. 19, 2012), <http://articles.latimes.com/2012/aug/19/local/la-me-hound-dog-20120819> (on file with the *McGeorge Law Review*) ("[T]he barking of approaching dogs gives [bears and bobcats] advance warning and a chance to escape. Bears can run for miles and reach speeds of up to 30 mph.").

85. *See id.* (quoting Josh Brones, president of California Houndsmen for Conservation, arguing that the challenge does not lie in the shot itself, but rather, "putting yourself in position for the shot").

86. *See, e.g.*, CAL. CODE REGS. tit. 14, § 311(o) (2012) (allowing dogs "to take and retrieve resident small game").

87. *See id.*; *see also id.* § 257 (defining a "ring-necked pheasant" as resident small game).

88. Thompson, *supra* note 10.

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values . . . .”<sup>89</sup> While still a concern today,<sup>90</sup> newly proposed laws and regulations have become increasingly focused on ensuring that species do not overpopulate.<sup>91</sup> Like over-hunting, overpopulation can have a negative impact on the environment.<sup>92</sup> The legislature should be concerned about both to draft effective fish and game legislation.<sup>93</sup>

Unlike prior laws that sought to protect dwindling populations of animals, Chapter 595 is not supported by contemporary concerns about overhunting.<sup>94</sup> Black bear populations, in particular, have grown exponentially in recent years.<sup>95</sup> This increase has allowed the Department to consider expanding annual limits for harvested bears in the state.<sup>96</sup> In 2011, nearly half of all harvested bears were taken by hunters using dogs.<sup>97</sup> With this type of hunting no longer available, less bears are likely to be harvested, creating serious concerns that the black bear population will exceed a healthy range.<sup>98</sup>

In some areas, this may have already begun to happen.<sup>99</sup> Too many black bears in a single area are likely to exhaust food sources, forcing some bears to

89. CAL. FISH & GAME CODE § 1801(a), (c) (West 1998); *see also, e.g., Bear Management Program*, CAL. DEP’T OF FISH & GAME, [www.dfg.ca.gov/wildlife/hunting/bear/index.html](http://www.dfg.ca.gov/wildlife/hunting/bear/index.html) (last visited Oct. 9, 2012) (on file with the *McGeorge Law Review*) (recognizing that hunting regulations became more restrictive after 1948, when black bears were officially listed as a “game mammal,” “prohibiting trapping, killing of cubs or sows with cubs, and reducing the bag limit from two to one bear per license year”).

90. FISH & GAME § 1801(a), (c).

91. *See* Hall, *supra* note 12 (stating that “officials at the state Department of Fish and Game say they proposed [expansive hunting regulations] because California’s black bear population is flourishing and spreading”).

92. In 1990, California voters passed Proposition 117, which “banned mountain lion hunting in the state . . . .” Darren K. Cottriel, *The Right to Hunt in the Twenty-First Century: Can the Public Trust Doctrine Save an American Tradition?*, 27 PAC. L.J. 1235, 1274 (1996). As a result, California “has experienced an overpopulation of mountain lions . . . [which] has resulted in two persons being killed . . . as well as a dramatic increase in attacks on humans, pets, and livestock . . . .” *Id.* at 1275. These negative effects are “due to the fact that the available mountain lion habitat in the state is insufficient for the animals’ growing population, thereby forcing mountain lions to go into cities and suburbs in search of food.” *Id.*

93. *See* FISH & GAME § 1801(a) (inferring that, given overpopulation concerns, the preservation of a species (and others affected by it) may entail an aspect of population control, through hunting, or by other means).

94. *Id.*

95. *Black Bear Population Information*, *supra* note 9.

96. *See* Hall, *supra* note 12 (reporting on the proposed increased cap limits in 2010 by Fish and Game officials, stating that the officials are “confident that the [black bear] population is robust enough to withstand well over the 1,700-bear kill figure”).

97. CAL. DEP’T OF FISH & GAME, 2011 CALIFORNIA BEAR TAKE REPORT 2 (2012) [hereinafter 2011 CALIFORNIA BEAR TAKE REPORT]. This number could actually be as high as sixty percent, because thirteen percent of bear hunters did not indicate whether they used dogs or not. *Id.*

98. Gaines, *supra* note 73. As for bobcats, trapping remains a viable way to help control the animals’ population. CAL. CODE REGS. tit. 14, § 478 (2012). Bear trapping, however, is not legal in California. FISH & GAME § 3011.

99. *See Black Bear Population Information*, *supra* note 9 (stating that in some areas, the black bear population is as dense as two and a half bears per square mile).

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look elsewhere.<sup>100</sup> This is one possible explanation for a few recent instances where black bears have wandered into highly urban areas in close proximity to humans.<sup>101</sup> Once bears become too dependent on humans for food, society will deem them to be a danger, likely relocating or even killing them.<sup>102</sup>

Proponents of Chapter 595 claim that dogs are not necessary for wildlife management; they assume others will fill the spots vacated by those using hounds.<sup>103</sup> Even with hound hunting, however, the Department has considered increasing the annual black bear harvest.<sup>104</sup> Every few years, the Department evaluates seasonal limits by studying an animal's current population and trending growth to determine harvest goals in order to keep the population viable.<sup>105</sup> In 2010, for example, the Department set a harvest goal of 1,700 bears, while only 1,503 were taken.<sup>106</sup> In 2011, although overall harvest numbers were up, bear hunters only barely managed to meet Department goals.<sup>107</sup> Even prior to Chapter 595, the Department considered increasing black bear limits as a result the animal's burgeoning population in combination with low hunting numbers.<sup>108</sup> Now, without hound hunting, the Department may have to expand these limits

100. See Hall, *supra* note 12 (quoting Doug Updike, a wildlife ecologist and Fish and Game's Program Manager, on the problem with black bear overpopulation, "[t]hey get hit by cars, we get reports by property owners that they broke into their houses, we get pictures, we know what bear prints look like").

101. See, e.g., Darsha Philips & Melissa MacBride, *Black Bear Roams Around Montrose Neighborhood*, ABC 7 (Apr. 10, 2012), [http://abclocal.go.com/kabc/story?section=news/local/los\\_angeles&id=8614952](http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=8614952) (on file with the *McGeorge Law Review*) (citing an incident in April 2012 where a black bear broke into a garage freezer in Glendale, California to "chow down on frozen meatballs and tuna"); *Bear Crashes Graduation Ceremony in Bakersfield, California*, USA TODAY (June 1, 2012), <http://usatoday30.usatoday.com/news/nation/story/2012-06-01/bear-california-graduation/55320944/1> (on file with the *McGeorge Law Review*) ("[A] young black bear approached Ramon Garza Elementary School in Bakersfield . . . forcing students who were outside to return to their classrooms . . .").

102. Ironically, when state biologists respond to human-bear conflicts, their preferred method of bear removal is hound hunting. See *California Bans Hunting with Hounds*, AM. HUNTER, <http://www.americanhunter.org/blogs/california-bans-hound-hunting/> (last visited Oct. 9, 2012) (on file with the *McGeorge Law Review*) (responding to animal rights activists that "[b]ears are still going to be hunted with hounds [in California]. It'll just be at taxpayer expense.").

103. See Noyes, *supra* note 78 (quoting Jennifer Fearing, director of the Humane Society, stating that hound hunting is "unnecessary for [the] management of bear species").

104. See CAL. DEP'T OF FISH & GAME, BEAR HUNTING 9 (2011) [hereinafter BEAR HUNTING] (wanting to increase bear cap limits to two-thousand).

105. See *generally id.* at 18–27 (basing proposed regulations on "Population Status" and "Modeling the Statewide Black Bear Resource").

106. CAL. DEP'T OF FISH & GAME, 2010 BEAR TAKE REPORT 1 (2011) [hereinafter 2010 BEAR TAKE REPORT]; see also Hall, *supra* note 12 (referencing the 1,700 limit).

107. See 2011 CALIFORNIA BEAR TAKE REPORT, *supra* note 98, at 2, 4 (recording only 1,745 bears).

108. BEAR HUNTING, *supra* note 104, at 9.

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even further.<sup>109</sup> Still, there are no guarantees that higher limits will translate into more kills.<sup>110</sup>

#### C. Economic Benefits

Another perceived concern associated with Chapter 595 is the negative impact the law could have on the state's finances.<sup>111</sup> This too should be a concern when fashioning new fish and game legislation.<sup>112</sup> As a result of Chapter 595, many hound hunters will be dissuaded from renewing or obtaining their state hunting licenses, potentially costing California millions in revenue.<sup>113</sup> In 2011, for example, hunting licenses generated nearly eleven million dollars, while bear and bobcat tags brought in almost \$900,000 in additional revenue.<sup>114</sup> It is unclear how much of this revenue is directly attributable to hound hunters, and thus, is in jeopardy of being lost.<sup>115</sup> In tough economic times, even a fraction of these funds could prove useful to an already strained state budget.<sup>116</sup>

## V. CONCLUSION

Chapter 595 limits a popular form of sport hunting, hampering its effectiveness as a wildlife management tool, and potentially severing a steady revenue stream generated through hunting license fees.<sup>117</sup> This is problematic because the legislature could theoretically use such tactics to end all forms of hunting in the future.<sup>118</sup> As appealing a concept that may seem to some,<sup>119</sup> the simple truth is that hunting is a necessary and important tool to ensure that the

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109. The inference is that non-hound hunters will have to make up for approximately 850 bears taken by hound hunters next hunting season. 2011 CALIFORNIA BEAR TAKE REPORT, *supra* note 98, at 2. At a measly eight percent success rate *including* hound hunting, bear hunters will be hard-pressed to cover such ground. *Id.*

110. *See id.* (reflecting only 1,745 kills from 21,581 issued bear tags in 2011).

111. Gaines, *supra* note 73.

112. CAL. FISH & GAME CODE § 1801(f) (West 1998).

113. McGreevy, *supra* note 84 (reporting that California hound hunters are “threaten[ing] to refuse to buy licenses, depriving the state of significant revenue, and instead do their hunting in other states”).

114. HUNTING: SALES REPORTED BY LICENSE YEAR (DOLLARS) 1 (2012) (on file with the *McGeorge Law Review*).

115. *See id.* (reporting figures for licenses and tags, without specifying the amount attributable to hound hunters).

116. Gaines, *supra* note 73.

117. *See, e.g., id.* (warning that Chapter 595 “sets a terrible precedent” undermining hunting as a “proven model of [wildlife] management”).

118. *Id.*

119. *See* Carla Hall, *Gov. Brown, a Softy for Bear—But Not for Bats*, L.A. TIMES (Sept. 27, 2012), <http://www.latimes.com/news/opinion/opinion-la/la-ol-brown-signs-bill-banning-hounding-of-bears-20120926,0,1236381.story> (on file with the *McGeorge Law Review*) (praising Chapter 595 as “good news for bears and dogs [but] not as good if the state had banned bear hunting altogether”).

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state's animal populations remain healthy and viable.<sup>120</sup> Chapter 595 presents further shortcomings in that it unnecessarily jeopardizes steady revenue streams at a time when state coffers are already running low.<sup>121</sup>

At the turn of the twentieth century, Chapter 595 would have likely proved beneficial.<sup>122</sup> At that time, hunting had exceeded its means and was in need of overly strict hunting regulations.<sup>123</sup> Today's black bears and bobcats, however, stand to gain little from such restrictions.<sup>124</sup> In this regard, the animals could come to stand for symbols themselves; just as the grizzly epitomizes the need for more hunting regulations, the black bear or bobcat could very well become examples of when those regulations have gone too far.<sup>125</sup>

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120. Gaines, *supra* note 73.

121. *Id.*

122. See Hall, *supra* note 12 (noting that in the 1920s, "ranchers and farmers wiped out the grizzly, leaving its sole California presence on the state flag").

123. *Id.*

124. Gaines, *supra* note 73.

125. *Id.*