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**AB-614 Wildlife habitat: birds.** (2021-2022)

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**Assembly Bill No. 614**

**CHAPTER 521**

An act to amend Sections 3469, 3480, 3682.1, 3684, 3700.1, and 3701 of, and to add Section 3467.5 to, the Fish and Game Code, relating to wildlife habitat.

[ Approved by Governor October 05, 2021. Filed with Secretary of State October 05, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 614, Aguiar-Curry. Wildlife habitat: birds.

(1) Existing law makes it unlawful to take upland game birds without first procuring a hunting license and an upland game bird hunting validation. Under existing law, moneys derived from upland game bird hunting validations are required to be deposited in the Upland Game Bird Account in the Fish and Game Preservation Fund. Existing law provides that moneys in the account are to be available, upon appropriation, to the Department of Fish and Wildlife to be used solely for the purpose of acquiring land, completing projects and implementing programs to benefit upland game bird species, and expanding public hunting opportunities and related public outreach. Existing law requires an advisory committee, as determined by the department, to review and provide comments to the department on all proposed projects funded by the Upland Game Bird Account to help ensure that specified requirements pertaining to the Upland Game Bird Account have been met. Existing law requires the department to post on its internet website budget information and a brief description for all projects funded from the Upland Game Bird Account.

Existing law requires a person to procure a hunting license and a state duck hunting validation to take migratory birds, as specified. Under existing law, moneys derived from state duck hunting validations are required to be deposited in the State Duck Stamp Account in the Fish and Game Preservation Fund. Existing law authorizes moneys in the account to be used for, among other things, projects or endowments approved by the Fish and Game Commission for the purpose of protecting, preserving, restoring, enhancing, and developing migratory waterfowl breeding and wintering habitat, evaluating habitat projects, and conducting waterfowl resource assessments and other waterfowl-related research.

This bill would raise by \$10 the upland game bird hunting validation and the state duck hunting validation fees, as specified, with that \$10 to be deposited, and available upon appropriation to the department for the Nesting Bird Habitat Incentive Program, in the Nesting Bird Habitat Incentive Program Account, which the bill would create in the Fish and Game Preservation Fund.

This bill instead would require the Upland Game Bird Account advisory committee to annually review and provide comments to the department on all proposed projects and other expenditures funded from the Upland Game Bird Account to help ensure that specified requirements pertaining to the Upland Game Bird Account have been met and require the department to post budget information and a brief description on its internet website for all projects and other expenditures funded from the Upland Game Bird Account.

(2) Existing law establishes the Nesting Bird Habitat Incentive Program, which authorizes the department to include direct payments or other incentives to encourage landowners to voluntarily cultivate or retain upland cover crops or other upland

vegetation on idled lands to provide waterfowl, upland game bird, and other wildlife habitat cover for certain purposes, including encouraging the use of idled agricultural lands for wildlife habitat, as specified. Existing law authorizes state or federal grants, state bond moneys, and private grants and donations to be allocated by the department for the purposes of the program.

This bill would revise and recast the program to authorize the inclusion of direct payments or other incentives to encourage landowners, as defined, to voluntarily cultivate or retain upland cover crops, cereal grains, grasses, forbs, pollinator plants, or a combination thereof to provide waterfowl and other game bird nesting habitat cover for certain purposes, including encouraging the use of agricultural lands for wildlife habitat, as specified. The bill would additionally authorize moneys in the Nesting Bird Habitat Incentive Program Account to be used by the department for reasonable administrative and monitoring costs associated with the implementation of the program. The bill would authorize the department to enter into grants or contracts directly with landowners, and would authorize the department to enter into grants or contracts with public and private entities, including nonprofit organizations, and California Native American tribes to help the department implement the program. The bill would require the program provisions to be implemented only if a sufficient amount of game bird stamp funds, federal grants, or other moneys are secured, as determined by the department.

(3) Existing law establishes the California Winter Rice Habitat Incentive Program that authorizes the Director of Fish and Wildlife to enter into contracts for an initial term of 3 years with nonpublic entities that are owners of record or with lessees of productive agricultural rice lands that are winter flooded and that are determined by the director to be important for the conservation of waterfowl. Existing law provides that, under these contracts, the use of the land is restricted for waterfowl conservation and habitat purposes in a manner that allows for the use of the land for rice farming.

This bill would authorize the department to enter into grants or contracts directly with landowners or lessees, and agreements with public and private entities and California Native American tribes, to help the department implement the program. The bill would authorize the public and private entities and California Native American tribes that are party to the above agreements to enter into grants or contracts with landowners or lessees to carry out the purposes of the program. The bill would make other related changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 3467.5 is added to the Fish and Game Code, to read:

**3467.5.** The Nesting Bird Habitat Incentive Program Account is hereby created in the Fish and Game Preservation Fund. Moneys deposited in the Nesting Bird Habitat Incentive Program Account shall be available, upon appropriation by the Legislature, to the department for the purposes of the Nesting Bird Habitat Incentive Program (Article 9 (commencing with Section 3480)).

**SEC. 2.** Section 3469 of the Fish and Game Code is amended to read:

**3469.** (a) There is established the California Winter Rice Habitat Incentive Program subject to the requirements of this article.

(b) Subject to appropriation for purposes of this article, the director may enter into contracts with nonpublic entities that are owners of record or with lessees of productive agricultural rice lands that are winter flooded and that are determined by the director to be important for the conservation of waterfowl. The contract shall enforceably restrict the use of the land for the conservation of waterfowl and their habitat in a manner that allows for the use of the land for rice farming consistent with Section 8 of Article XIII of the California Constitution.

(c) The director shall give priority to contracts that have the greatest potential for restoring, enhancing, and protecting high-quality waterfowl habitat, especially that subject to destruction, drastic modification, or significant curtailment of habitat values. The director may give priority to contracts that provide additional environmental cobenefits, including cobenefits to species such as fish or snakes.

(d) (1) Before entering into a contract pursuant to this article, if the land proposed to be subject to the contract is located within five miles of a runway on a military base or international airport, the director shall consult with the applicable branch of the United States military or the operator of the international airport, as applicable.

(2) The department shall develop guidance and protocols regarding consultation conducted pursuant to paragraph (1) that addresses, at a minimum, notification, participation, and a procedure to request the director to reconsider a decision to enter into a contract pursuant to this article.

(e) Contracts entered into pursuant to this article are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or the California Disabled Veteran Business Enterprise Program (Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code).

(f) For purposes of this article, "productive agricultural rice lands that are winter flooded" means a field that has been farmed to rice during each growing season before each of the winter flooding seasons contracted for flooding and is intentionally maintained in a flooded state. When possible, flooding should last for at least 70 days between October 15 and February 1, inclusive, of the following year.

(g) To implement the California Winter Rice Habitat Incentive Program, the department may do both of the following:

(1) Enter into grants or contracts directly with landowners or lessees.

(2) Enter into agreements with public and private entities and California Native American tribes, as defined in Section 21073 of the Public Resources Code, that possess demonstrated experience and understanding of California rice farming practices and wildlife-related conservation practices to help the department implement the program. Pursuant to these agreements, the public and private entities and California Native American tribes may enter into grants or contracts with landowners or lessees to carry out the purposes of the program.

**SEC. 3.** Section 3480 of the Fish and Game Code is amended to read:

**3480.** (a) (1) The department shall establish the Nesting Bird Habitat Incentive Program, which may include direct payments or other incentives, to encourage landowners to voluntarily cultivate or retain upland cover crops, cereal grains, grasses, forbs, pollinator plants, or a combination thereof to provide waterfowl and other game bird nesting habitat cover, including, but not limited to, for the purposes described in Section 1018 of the Water Code.

(2) The program is established for waterfowl, ring-necked pheasant, and other game bird breeding purposes and shall not be used to provide managed wetland habitat, as defined in paragraph (1) of subdivision (a) of Section 1506, for wintering waterfowl habitat purposes.

(3) For purposes of this section, "landowner" means any entity with authority to manage real property to provide waterfowl, ring-necked pheasant, and other game bird nesting habitat cover.

(b) The department may develop guidelines and criteria for the Nesting Bird Habitat Incentive Program as it deems appropriate, but shall ensure that the guidelines and criteria are flexible enough to meet landowner needs. The program shall do all of the following:

(1) Prohibit a landowner who participates in the program and has committed to leaving the established upland cover crops, cereal grains, grasses, forbs, pollinator plants, or a combination thereof in place after April 1 from engaging in practices, such as disking, spraying of herbicides, mowing, chopping, or rolling any vegetation on those lands until after July 15, or as late as possible each year, to address waterfowl nesting, upland game bird habitat, and other wildlife needs.

(2) Give priority to grants or contracts with landowners that include lands adjacent to, or in close proximity to, waterfowl brood habitat, including, but not limited to, areas flooded during the spring or summer for the cultivation of rice, State Wildlife Areas, National Wildlife Refuges, and private wetlands enrolled in the California Waterfowl Habitat Program (Article 7 (commencing with Section 3460)).

(3) Be consistent with the waterfowl habitat breeding goals and objectives of the Central Valley Joint Venture Implementation Plan, as it may be amended, or the Intermountain West Joint Venture Implementation Plan, as it may be amended.

(4) Give priority to landowners who are willing to enter into grants or contracts for three years or more.

(5) Allow for the rotation of fallowed fields to different areas of a landowner's property on an annual basis.

(6) Prohibit, in connection with the approval of a transfer, a landowner who participates in the program from diverting or using any water under any basis of right to irrigate land idled in order to provide water for transfer, unless the transfer is approved by the State Water Resources Control Board pursuant to Part 2 (commencing with Section 1200) of Division 2 of the Water Code, or by the Department of Water Resources pursuant to Article 4 (commencing with Section 1810) of Chapter 11 of Part 2 of Division 2 of the Water Code, and the irrigation of the idled land is expressly authorized pursuant to that approval.

(7) Allow for activities undertaken or requested by mosquito control agencies to address mosquito production.

(c) Moneys received for the purposes of this section shall be deposited in the Nesting Bird Habitat Incentive Program Account, created pursuant to Section 3467.5.

(d) The department may utilize the assistance of the California Waterfowl Habitat Program (Article 7 (commencing with Section 3460)) in implementing the Nesting Bird Habitat Incentive Program, including, but not limited to, establishing program priorities, contract requirements, and monitoring and compliance activities. Public and private entities, including nonprofit organizations, and

California Native American tribes, as defined in Section 21073 of the Public Resources Code, may also assist in the implementation and delivery of the program to the extent that the department deems appropriate.

(e) To implement the Nesting Bird Habitat Incentive Program, the department may do both of the following:

(1) Enter into grants or contracts directly with landowners.

(2) Enter into grants or contracts with public and private entities, including nonprofit organizations, and California Native American tribes, as defined in Section 21073 of the Public Resources Code, to help the department implement the program. Pursuant to these grants or contracts, the public and private entities, nonprofit organizations, and California Native American tribes may enter into grants or contracts with landowners to carry out the purposes of the program.

(f) The department may consult with the Wildlife Conservation Board, the United States Fish and Wildlife Service, the Natural Resources Conservation Service, California Native American tribes, as defined in Section 21073 of the Public Resources Code, nonprofit waterfowl and upland game bird organizations, and resource conservation districts before implementing this section to determine the optimal ways to increase and enhance waterfowl and upland game bird breeding habitat on idled lands.

(g) This section shall be implemented only if a sufficient amount of game bird stamp funds, federal grants, or other moneys are secured, as determined by the department, for the purposes of this section.

(h) The department may carry out the game bird breeding habitat purposes of the Nesting Bird Habitat Incentive Program on State Wildlife Areas and National Wildlife Refuges when necessary and as the department deems appropriate utilizing moneys in the Nesting Bird Habitat Incentive Program Account, established pursuant to Section 3467.5.

(i) Contracts entered into pursuant to this section are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or the California Disabled Veteran Business Enterprise Program (Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code).

(j) The department may use funds from the Nesting Bird Habitat Incentive Program Account for reasonable administrative and monitoring costs associated with the implementation of the Nesting Bird Habitat Incentive Program.

**SEC. 4.** Section 3682.1 of the Fish and Game Code is amended to read:

**3682.1.** (a) It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 3031, to take any upland game bird species without first procuring an upland game bird hunting validation, as provided in subdivision (b), and having the validation affixed to their valid hunting license.

(b) (1) Upland game bird hunting validations may be obtained from the department or a licensed agent authorized pursuant to Section 1055.1 for a fee of six dollars and twenty-five cents (\$6.25), adjusted pursuant to Section 713.

(2) In addition to the fee imposed pursuant to paragraph (1), a fee of ten dollars (\$10) is hereby imposed to obtain an upland game bird hunting validation, as adjusted pursuant to Section 713.

**SEC. 5.** Section 3684 of the Fish and Game Code is amended to read:

**3684.** (a) The Upland Game Bird Account is hereby established within the Fish and Game Preservation Fund.

(b) (1) All funds derived from the sale of upland game bird hunting validations and upland game bird stamps shall be deposited in the Upland Game Bird Account, except as provided in paragraph (2), to permit separate accountability for the receipt and expenditure of these funds.

(2) Notwithstanding paragraph (1), ten dollars (\$10), as adjusted pursuant to Section 713, for each upland game bird hunting validation sold shall be deposited in the Nesting Bird Habitat Incentive Program Account, created pursuant to Section 3467.5.

(c) Funds deposited in the Upland Game Bird Account shall be available for expenditure upon appropriation by the Legislature to the department. These funds shall be expended solely for the purpose of acquiring land, completing projects and implementing programs to benefit upland game bird species, and expanding public hunting opportunities and related public outreach, including, but not limited to, enhancing upland game bird habitat. Any land acquired with funds from the Upland Game Bird Account shall be acquired in fee title or protected with a conservation easement and, to the extent possible, be open or provide access to the public for upland game bird hunting. The department may also use funds from the Upland Game Bird Account to pay for administrative and enforcement costs of the programs and activities described in this section. The amount allocated from the account for administrative costs shall be limited to the reasonable costs associated with administration of the programs and activities described in this section.

(d) The department may make grants to, reimburse, or enter into contracts or other agreements, as defined in subdivision (a) of Section 1571, with public and private entities, including nonprofit organizations, and California Native American tribes, as defined in Section 21073 of the Public Resources Code, for the use of the funds from the Upland Game Bird Account to carry out the purposes of this section, including related habitat conservation projects.

(e) An advisory committee, as determined by the department, that includes interested nonprofit organizations that have goals and objectives directly related to the management and conservation of game bird species and primarily represent the interests of persons licensed pursuant to Section 3031 shall annually review and provide comments to the department on all projects and other expenditures funded from the Upland Game Bird Account to help ensure that the requirements of this section have been met. The department shall post budget information and a brief description on its internet website for all projects and other expenditures funded from the Upland Game Bird Account.

(f) Upland game bird projects authorized pursuant to this section are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or the California Disabled Veteran Business Enterprise Program (Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code).

(g) The department shall maintain the internal accountability necessary to ensure compliance with the collection, deposit, and expenditure of funds specified in this section.

**SEC. 6.** Section 3700.1 of the Fish and Game Code is amended to read:

**3700.1.** (a) It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 3031, to take any migratory game bird, except jacksnipe, coots, gallinules, western mourning doves, white-winged doves, and band-tailed pigeons, without first procuring a state duck hunting validation as provided in subdivision (b), and having that validation in their possession while taking those birds.

(b) (1) State duck hunting validations shall be sold for a fee of ten dollars (\$10), as adjusted pursuant to Section 713, by the department and by license agents, who are authorized by the department pursuant to Section 1055.1, in the same manner as hunting licenses.

(2) In addition to the fee imposed pursuant to paragraph (1), a fee of ten dollars (\$10) is hereby imposed to obtain a state duck hunting validation, as adjusted pursuant to Section 713.

**SEC. 7.** Section 3701 of the Fish and Game Code is amended to read:

**3701.** (a) All funds derived from the sale of state duck hunting validations and state duck stamps, and related items authorized by subdivision (g) of Section 3700.2, shall be deposited in the State Duck Stamp Account in the Fish and Game Preservation Fund, except as provided in subdivision (b), to permit separate accountability for the receipt and expenditure of these funds. An amount not to exceed 6 percent of the amount annually deposited in the account may be used for administrative overhead related to the use of those funds and for implementation of the federal Migratory Bird Harvest Program.

(b) Ten dollars (\$10), as adjusted pursuant to Section 713, of the amount collected by the department for each state duck hunting validation sold shall be deposited in the Nesting Bird Habitat Incentive Program Account, created pursuant to Section 3467.5.