

Date of Hearing: March 25, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 764 (Jeff Gonzalez) – As Introduced February 18, 2025

SUBJECT: Birds and mammals: nongame birds

SUMMARY: Includes the mute swan (*Cygnus olor*) in the list of nongame bird species that may be taken or possessed at any time.

EXISTING LAW:

- 1) Allows two nongame birds, the English sparrow (*Passer domesticus*) and starling (*Sturnus vulgaris*), to be taken or possessed at any time during daylight hunting hours. Allows landowners or those with permission from landowners to take the listed birds without hunting license or depredation permit on that land. Requires all other individuals to have a hunting license [Fish and Game Code (FGC) § 3801].
- 2) Makes it 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 (FGC § 3000).
- 3) Makes it unlawful to take a bird or mammal without a license or entitlement (FGC § 3007).
- 4) Defines “take” to mean to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (FGC § 86).
- 5) States that all birds occurring naturally in California that are not resident game birds, migratory game birds, or fully protected birds are nongame birds. Makes it unlawful to take any nongame bird except as provided in the FGC or in accordance with regulations of the Fish and Game Commission (the Commission) (FGC § 3800).
- 6) Allows nongame birds not covered by the Migratory Bird Treaty Act, which are found to be injuring growing crops or property, to be taken by the owner or tenant of the premises or by officers or employees of the Department of Food and Agriculture or county when acting in their official capacities (FGC § 3801.5).
- 7) Allows the take of English sparrow, starling, domestic pigeon (*Columba livia*) except as prohibited in FGC § 3680, coyote, weasels, skunks, opossum, moles and rodents at any time of year and in any number, except has prohibited in regulation [14 California Code of Regulation (CCR) § 472].
- 8) Makes it unlawful to import, transport, or possess any live animal listed within that section, including the mute swan, except by permit and subject to conditions and restrictions designated by the California Department of Fish and Wildlife (CDFW) (14 CCR § 671).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill adds mute swan to the list of nongame birds that may be taken or possessed at any time. According to the author, “[This bill] is an essential step in protecting California’s native wildlife, habitats, and ecosystems. As environmental challenges and invasive species put increasing pressure on our state’s biodiversity, this legislation promotes commonsense conservation efforts that safeguard vital habitats and protect species at risk.”
- 2) **Background.** Mute swan (*Cygnus olor*) are very large birds weighing 25–30 pounds and measuring 4–5.5 feet in length, with a wingspan up to nearly 8 feet. Adult mute swan are solid white with a black face-patch and black to grayish-pink legs with webbed feet. As their name may suggest, mute swan are not very vocal, but will grunt, snort, or hiss to communicate, especially if they feel threatened.

According to the CDFW’s *Invasive Species Factsheet: Mute swan (Cygnus olor)*, mute swan were introduced to the United States, specifically to New York State, from Western Europe during the late 1800s. They were intentionally brought to the United States by private breeders for display at zoos, parks, and private estates. A small number of these swans escaped captivity and others are believed to have been intentionally released. They have been reported to occur in numerous states from Washington to New Hampshire and south to Florida, with substantial breeding populations in Chesapeake Bay, Long Island Sound, and the Great Lakes. Mute swan continue to be purchased in many states for aesthetic purposes, control of algae and aquatic plants, and to manage nuisance populations of waterfowl. They have been observed in the wild in Suisun Marsh (Solano County) and Petaluma Marsh Wildlife Area (Marin and Sonoma Counties) because of their preference for shallow, coastal and freshwater habitats such as estuaries, bays, wetlands, ponds, and lakes.

Every year since 1948, CDFW has conducted a Waterfowl Breeding Population Survey. CDFW began monitoring for feral mute swan in 2007. The 2024 survey estimates a 71% increase in mute swan since 2023 and a 535% increase above their 16-year average. CDFW also reports an increase in public sightings of mute swan.

A brute swan. CDFW’s Factsheet reports that mute swan are voracious feeders, with each adult swan consuming up to 8 pounds of submerged aquatic vegetation (SAV) per day, and destroying much more in the process. SAV is an important part of aquatic ecosystems as it provides food and shelter for native waterfowl, fish, and invertebrates. By consuming massive amounts of SAV, mute swan negatively impact the structure and function of aquatic habitats that native species depend upon. Additionally, mute swan are aggressive towards other birds, as well as people. Mute swan disrupt nesting activity of native waterfowl by chasing birds from their nests and have been reported to physically injure, or even kill, other birds. Mute swan have been reported to attack people and, in some cases, have critically injured children and pets.

Because the mute swan population has increased quickly and the species competes with native species, a few states, such as New Jersey, New York, Maryland, Ohio, and Michigan, have population reduction plans or initiated culling practices. Additionally, there is an Atlantic Flyway Mute Swan Management Plan, which is a cooperative plan between the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and Mexico. This Plan includes strategies to reduce mute swan numbers through hunting, egg treatment, prohibiting release, and amending state laws to allow for greater control.

Code and regulation. FGC § 3801 was added to statute in 1971 (Chapter 1470, § 15) and originally included English sparrow, crows, American magpie, California scrub jay, Steller's jay, and, as declared by a county board of supervisors, for a 61 day window, yellow-billed magpie. The language of the statute indicates that yellow-billed magpies were available for take due to crop damage. This list was later amended in 1974 to only include English sparrow and starling (Chapter 1129, § 1). Note, all species removed from FGC § 3801 were native to the state and removed because their take conflicted with federal regulation.

Currently, FGC § 3801 allows listed nongame birds (i.e., English sparrow and starling) to be taken or possessed at any time during daylight hunting hours. This section also allows landowners, or those with permission from landowners, to take the listed birds without a hunting license or depredation permit on that land. It does, however, require all other individuals to have a hunting license.

A previous committee bill (AB 1729, 2007) authored by this committee and sponsored by CDFW also attempted to extend the list of nongame birds that may be taken at any time in FGC § 3801. AB 1729 proposed to add rock dove, also known as the domestic pigeon, to the list due to their over-population, property damage, and non-native status. Opposition arose to including this bird species because of concern that the pigeons would be used in dog training, so this provision was removed. However, to reduce confusion and enforcement issues, the Commission adopted changes to 14 CCR § 472 that added rock dove to be included as nongame birds (i.e., English Sparrow and starling) that may be taken at any time. All three species are not native to California.

CDFW and the Commission maintain a list of species that are unlawful to import, transport, or possess while alive except through CDFW's Restricted Species Permit (14 CCR § 671). The Commission has determined the listed animals are not normally domesticated in this state. Mute swan are on this list. They are termed "detrimental animals" and designated by the letter "D" next to their listing, indicating that they pose a threat to native wildlife, agriculture interests of the state, or public health or safety. According to CDFW, no restricted species permits have been issued for mute swan since they were added to the list in 2008.

Case of mistaken identity? California has two native species of swan: tundra swan (*Cygnus columbianus columbianus*) and trumpeter swan (*Cygnus buccinators*). California enjoys a wintering population of tundra swan that may be seen in fall and winter in the Central Valley. The trumpeter swan is classified as a "fully protected species" under FGC § 3511. Both the Tundra swan and trumpeter swan are protected under the federal Migratory Bird Treaty Act (MBTA). The mute swan is usually easily distinguishable from its non-native counterparts. Mute swan can be distinguished from other swan species by their orange bill with fleshy, black knob, long "S" shaped neck, and long tail feathers. The mute swan is not covered under the MBTA because it is not native to the U.S.



Photo: Tundra swan (left), mute swan (middle), and trumpeter swan (right).

This bill proposes to add mute swan to a list of three other birds that may be taken at any time: English sparrow, starling, and rock dove (note, rock dove is included in regulation, not code, see above). It is likely that other species may accidentally be taken when targeting those three nongame species, and these species do not benefit from the size of swan, which should only make identification easier.

It is important to note that it is still unlawful to hunt or discharge a firearm within 150 yards of a building without permission of the landowner (FGC § 3004) and still unlawful to willfully discharge a firearm in a grossly negligent manner that could result in injury or death of a person (Penal Code § 246.3). This bill does not create any exception for those laws.

- 3) **Arguments in support.** A number of groups write in support citing the aggressive and destructive nature of the mute swan. They claim that this bill will provide another tool in combating the invasive mute swan, similar to the state's treatment of other invasive species: nutria, starling, house sparrow, and rock pigeon. They add that mute swan "are not found on DFW lands, and private lands and other areas provide significant habitat for them. Thus, any meaningful control efforts must necessarily include other landowners."
- 4) **Related legislation.** AB 1729 (Committee on Water, Parks, and Wildlife), Chapter 285, Statutes of 2007, made numerous technical and substantive changes to FGC. AB 1729 originally contained a provision including rock dove (i.e., domestic pigeon) to FGC § 3801, which was removed from the bill before chaptering.

REGISTERED SUPPORT / OPPOSITION:

Support

California Waterfowl Association (Sponsor)
 American Bird Conservancy
 Backcountry Hunters and Anglers, California Chapter
 Black Brant Group, the
 Cal-Ore Wetlands and Waterfowl Council
 Delta Waterfowl
 Grassland Water District
 Suisun Resource Conservation District
 Tulare Basin Wetlands Association

Opposition

None on file

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