

Memorandum No. 1

Subject: Fish and Game Code Revision

As you know, perhaps the principal factor giving rise to Mrs. Davis' resolution directing a revision of the Fish and Game Code is the fact that the Fish and Game Commission has been given successive two-year grants of plenary power by each General Session of the Legislature since 1945 to make regulations with respect to sports hunting and fishing (seasons, bag limits, etc.) which supersede provisions of the code on the same subjects. Mr. J. D. Strauss of the Legislative Counsel's office, who is in charge of preparing their draft of a new Fish and Game Code, has reported that this has presented a number of problems to those engaged in that endeavor. One problem is that the Fish and Game Commission has exercised some but not all of its power so that the law applicable to some activities is found in part in the code and in part in regulations promulgated by the Commission - a confusing situation for the sportsman. Another is that the Commission has issued and later withdrawn certain regulations thus creating the problem whether the Fish and Game Code provisions which were superseded by these regulations were re-activated, so to speak, when the regulations were rescinded.

These problems have been discussed by Mr. Strauss and staff members of the Department of Fish and Game and of the Fish and Game Commission. There has been general agreement in principle that the best way to handle the situation, from the drafting viewpoint, would be to have the Fish and Game Commission occupy the entire field to which its plenary powers extends by promulgating such additional regulations as are necessary for this purpose. This entire area could then be omitted from the proposed new Fish and Game Code which would permit a much cleaner job of drafting than would be possible

if the code and the regulations were jointly to operate in certain areas.

The Fish and Game Department and Commission staffs have considered making such a recommendation to the Fish and Game Commission. The possibility of having the Law Revision Commission make the recommendation has also been discussed. The staffs have now apparently decided to make the recommendation and have suggested that the Law Revision Commission also do so. The basis of the Law Revision Commission's recommendation would be, of course, that it would greatly facilitate the drafting of a revised Fish and Game Code. It is believed that the Law Revision Commission's recommendation would carry considerable weight with the Fish and Game Commission.

There are two problems of timing involved:

(1) It would be sufficient for the purpose of the enactment of the new Fish and Game Code if the Fish and Game Commission were to adopt the proposed regulations in either 1956 or 1957 (Under the statute those on fish are adopted in January and February and those on game in April and May). But for the purpose of circulating and explaining the proposed draft of the new code (which is being prepared on the theory that the regulations will occupy the field), it is desirable that the new regulations be adopted in 1956; otherwise, there will appear to those receiving the draft code to be a gap in the law on some subjects. If the Law Revision Commission makes a recommendation to the Fish and Game Commission, this should be borne in mind.

(2) The Fish and Game Commission is going to meet in Sacramento on January 6 and 7 - the same days as we are meeting in San Francisco. The

Fish and Game Department and Commission staffs will make their recommendation at that time and if we are to make a recommendation, it should also be brought to the Fish and Game Commission's attention at that meeting. Presumably this could be handled by considering the matter at the beginning of our meeting on January 6 and communicating any recommendation which the Law Revision Commission decides to make to the Fish and Game Commission by telephone, telegram, teletype or messenger.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRM:fp