

Second Supplement to Memorandum 2013-11

Fish and Game Law (Proposed Organization of Code)

The Commission has received a letter from Kevin Hunting, Chief Deputy Director of the Department of Fish and Wildlife, commenting on the proposed reorganization of the Fish and Game Code. The staff greatly appreciates the input.

The main points raised in the letter are discussed below.

Organization of Code

The Department suggests a slightly different organizational model than the one proposed in Memorandum 2013-11. See Exhibit p. 1. Specifically, it suggests that the code be organized consistent with the categories that are specified in Fish and Game Code Section 13201 for use in the Department's accounting systems:

In establishing the appropriate programs or activities for this system, the department shall consider the following programs or activities:

- (a) Freshwater fisheries activities.
- (b) Marine fisheries activities.
- (c) Wildlife management activities.
- (d) Planning and environmental review.
- (e) Law enforcement.
- (f) Nongame and endangered species.
- (g) General administration.

The staff sees significant merit in that suggestion. While the code could be organized in any number of ways, the staff had already been leaning toward using functional criteria. The idea of paralleling the criteria being used by the department makes sense.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

Moreover, the categories above would not create a sharp dichotomy between hunting and fishing on the one hand and conservation on the other — a potentially problematic distinction given the important role that hunting and fishing can play in species and habitat conservation.

Fortunately, a shift to that organizational model would not undo any of the work that the staff has already completed in Memoranda 2013-12 and 2013-13. Those materials do not reach beyond the code’s preliminary and administration provisions. If the Commission decides to shift, at least provisionally, to the recommended organizational model, it could do so without difficulty.

Consolidation of Definitions

The Department urges the Commission to consolidate code-wide definitions in the Code’s preliminary provisions. See Exhibit pp. 1-2. That work can be done incrementally, as the Commission proceeds through the reorganization of the code.

Proposed Repeals

The Department points out several provisions that it recommends be repealed. See Exhibit p. 2. The Commission can analyze those suggestions when the reorganization process reaches the corresponding material.

Gendered Language

Finally, the Department urges the Commission to eliminate gender-specific language where possible. *Id.* That will not be a problem, as the Commission routinely makes such changes when drafting statutory language.

Respectfully submitted,

Brian Hebert
Executive Director



April 10, 2013

Ms. Xochitl Carrion, Chairperson
California Law Revision Commission
c/o Mr. Brian Hebert, Executive Director
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Subject: Fish and Game Code

Dear Ms. Carrion:

On behalf of the California Department of Fish and Wildlife (“Department”), I’d like to thank the California Law Revision Commission (“Commission”) for its attention to reform of the California Fish and Game Code (“Code”). As you might expect, the subject of statutory reform is one discussed frequently within the Department and, as a result, we have developed a list of items for your consideration as the process of forming Commission recommendations moves forward. We are providing some of our threshold thoughts here and will continue to provide input throughout your review. Our hope is that this initial input will complement the work that Commission staff has already undertaken and that is the subject of your next meeting.

The Commission could initially review the Code to improve the overall structure and make it a more user-friendly resource. For example, currently some species are dealt with in numerous, disparate sections, making it difficult to efficiently review any single subject in the Code. It might better be organized by Department function. For example, section 13201 lists categories used for accounting, (a) freshwater fisheries activities, (b) marine fisheries activities, (c) wildlife management activities, (d) planning and environmental review, (e) law enforcement, (f) nongame and endangered species and (g) general administration. These broad categories could be used to more logically reorganize the Code (subsections (c) and (f) could be consolidated under one heading to cover terrestrial species management).

Once the Code is reorganized by Department function, related subjects could be grouped together to make it easier to find applicable sections including provisions dealing with fees, advisory groups, licenses, and accounts. Next, provisions of California law contained in other codes that directly relate to Department functions could be relocated to the Fish and Game Code.

Finally, once the general reorganization is complete, all definitions of general application contained in the Code could be extracted from specific divisions and chapters and included in a general “Definitions” section at the front of the Code. As part of this effort, terms like “person” could be made to include all logical categories, such as tribes and

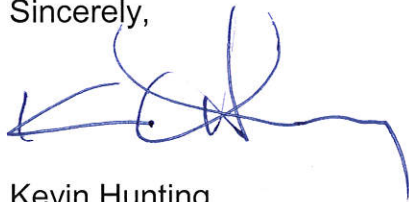
agencies that, while not currently included in the definition, are treated as “persons” for purposes of our permitting and other programs.

In addition to reorganizing existing provisions of the Code, we would like the Commission to consider whether a number of Code sections may be ripe for repeal or amendment. One suggested deletion relates to provisions of the Budget Act that, over the last several years, have given departments a reprieve from all but the most critical reports. Statutes that require reports such as those found in sections 456 and 7065-6 could be repealed. Another possible repeal relates to the Department’s market squid fishery management plan and regulations. By the terms of section 8429.7, if there is a market squid fishery management plan and regulations, Code sections 8420.5 - 8423.5 and 8426 – 8427 may be repealed. A third suggested repeal relates to steel-jawed leghold traps. Most of section 4004 became obsolete when section 3003.1 was added to the Code via Proposition 4 in 1998. It is now unlawful to use any steel-jawed leghold traps, regardless of size, features, or other circumstances (absent federal pre-emption).

Finally, the Code could also benefit from amendments to achieve gender neutrality. Provisions of the Code, currently phrased using the masculine vernacular, could be made gender neutral, such as those references in sections 710 “manpower,” 8040 et seq. and 8101 “fisherman.”

We look forward to working with you throughout this process and thank you for considering the Department’s input.

Sincerely,



Kevin Hunting
Chief Deputy Director

Cc: Angela Donlan
Staff Attorney