

Memorandum 2013-38

Fish and Game Law: Proposed Division 4 (Inter-Jurisdictional Compacts)

The Commission¹ has provisionally decided to divide the proposed Fish and Wildlife Code along these lines:

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Freshwater Fisheries
- Division 6. Marine Fisheries
- Division 7. Wildlife Management
- Division 8. Nongame and Endangered Species
- Division 9. Planning and Environmental Review
- Division 10. Miscellaneous Provisions

See Minutes (April 2013), p. 11.

This memorandum presents a staff draft of proposed Division 4 (“Inter-Jurisdictional Compacts”).

The staff has taken a fairly conservative approach in preparing the attached draft. For the most part, the language used in the draft is drawn from existing law verbatim. Where changes have been made (either to conform to standard legislative drafting practices, update cross-references, or correct clear defects), the changes have been noted in the corresponding Comment (which will be included in any final recommendation). Courts have generally treated Commission Comments as evidence of legislative intent, with regard to legislation enacted on the Commission’s recommendation.

There are “Staff Notes” following some provisions of the proposed law. Some of the Staff Notes identify issues that will require future attention. Others solicit public comment in response to specific questions posed by the staff. Staff Notes

1. 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.

are intended to be temporary and will not be included in any final recommendation.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code or to the “proposed” provisions of the attached draft.

CONTENT OF PROPOSED DIVISION 4

The attached draft contains provisions of the Fish and Game Code that authorize cooperative agreements between California and other jurisdictions. Those provisions are fairly straightforward and do not present any significant questions. A few technical questions are posed in Staff Notes.

The draft does not contain provisions that merely authorize cooperation or consultation with other jurisdictions (especially where those provisions are a component of an integrated regulatory scheme).²

Nor does it include provisions that authorize cooperation between different California government entities and between government entities and private organizations.³

CONCLUSION

The attached draft represents an initial attempt to reorganize the inter-jurisdictional compact provisions of the Fish and Game Code.

There may be other provisions that should be located with those materials. If the staff discovers any similar provisions as this study proceeds, they can be added to proposed Division 4.

The staff invites public comment on any of the issues raised in this memorandum or the attached draft.

In addition, the staff would appreciate comment on whether any of the provisions included in the attached draft present the kinds of problems with consistency, redundancy, or ambiguity as to program authority or funding sources that the Commission has been tasked with addressing. See 2012 Cal. Stat. res. ch. 108. Because the Commission is new to fish and game law, it is important

2. See, e.g., Sections 1375 (cooperation with federal agencies), 3862 (consultation with United States Fish and Wildlife Service).

3. See, e.g., Sections 1227 (nonprofit partnerships), 2763 (consultation with Resources Agency, Department of Water Resources, State Water Resources Control Board, State Coastal Conservancy, San Francisco Bay Conservation and Development Commission, and California Coastal Commission), 13007(b)(2)(D) (authority to contract with local government, tribes, and nonprofits for specified purpose).

that subject matter experts assist in identifying such problems as the Commission proceeds through the code.

Respectfully submitted,

Brian Hebert
Executive Director

FISH AND WILDLIFE CODE

Staff Note: This is a preliminary staff draft of a proposed reorganization of specified provisions of the Fish and Game Code.

Statutory cross-references that cannot yet be adjusted (because the referenced provisions have not yet been reorganized) are set out in boldface type, for later attention.

A draft of an official Commission “Comment” follows each proposed section. Such Comments will be included in any final recommendation. They serve to indicate the source of each section and to describe how it compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation. For guidance on the terminology used in Commission Comments, see the Comment following proposed Section 20 (attached to Memorandum 2013-12).

There is a “disposition table” at the end of this document. It summarizes, in tabular form, the disposition of every provision that has been included in this draft. If an existing provision would be repealed as unnecessary, the table indicates that provision as “omitted.”

Some provisions of this draft may be followed by a “Staff Note.” Staff Notes are intended to be temporary and will not be part of the Commission’s final recommendation. They serve to flag issues requiring special attention or treatment.

The Commission welcomes public comment on any issue relating to the content of this draft. The Commission is particularly interested in comments on any of the following matters:

- (1) Responses to any questions posed in “Staff Notes.”
- (2) Any inconsistency, obsolescence, ambiguity, or problems relating to program authority and funding, whether *within* the provisions of this draft or *between* the provisions of this draft and other provisions of law.
- (3) Provisions that should have been included in this draft but were not (or provisions included in this draft that should have been located elsewhere).
- (4) Technical drafting errors.

Comments should be directed to Brian Hebert at bhebert@clrc.ca.gov.

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DISPOSITION OF FORMER LAW33

1 DIVISION 4. INTER-JURISDICTIONAL COMPACTS

2 PART 1. UNITED STATES

3 CHAPTER 1. ACCEPTANCE OF FEDERAL ACTS

4 **§ 4000. Assent to Public Law 415, Seventy-Fifth Congress**

5 4000. The State of California hereby assents to the provisions of the act of
6 Congress entitled “An act to provide that the United States shall aid the states in
7 wildlife–restoration projects, and for other purposes,” approved September 2, 1937
8 (Public Law 415, Seventy-fifth Congress), and the department, with the approval
9 of the commission, shall perform any acts as may be necessary to the conduct and
10 establishment of cooperative wildlife–restoration projects, as defined in that act of
11 Congress, in compliance with that act and rules and regulations promulgated
12 thereunder; and no funds accruing to the State of California from license fees paid
13 by hunters shall be diverted for any other purpose than the administration of the
14 Department of Fish and Wildlife and for the protection, propagation, preservation,
15 and investigation of fish and wildlife.

16 **Comment.** Section 4000 continues former Section 400 without change, except as indicated
17 below:

18 The following nonsubstantive changes were made:

- 19 • The words “such acts” were replaced with “any acts.”
- 20 • The words “such act” were replaced with “that act.”
- 21 • The word “game” was replaced with “wildlife.”

22 ☞ **Staff Note.** Before finalizing a tentative recommendation, the staff will make inquiries to
23 determine whether the citation to “Public Law 415, Seventy-fifth Congress” is in proper
24 Legislative Counsel form.

25 **§ 4005. Assent to Public Law 681, Eighty-First Congress**

26 4005. The State of California hereby assents to the provisions of the act of
27 Congress entitled “An act to provide that the United States shall aid the states in
28 fish restoration and management projects, and for other purposes,” approved
29 August 9, 1950 (Public Law 681, Eighty-first Congress), and the department, with
30 the approval of the commission, may perform any acts as may be necessary to the
31 conduct and establishment of cooperative fish restoration projects, as defined in
32 said act of Congress, in compliance with said act and rules and regulations
33 promulgated thereunder; and no funds accruing to the State of California from
34 license fees paid by fishermen shall be diverted for any other purpose than the
35 administration of the Department of Fish and Wildlife and for the protection,
36 propagation, preservation, and investigation of fish and wildlife.

37 **Comment.** Section 4005 continues former Section 401 without change, except as indicated
38 below:

- 1 The following nonsubstantive changes were made:
- 2 • The words “such acts” were replaced with “any acts.”
 - 3 • The word “game” was replaced with “wildlife.”

4 **☞ Staff Note.** Before finalizing a tentative recommendation, the staff will make inquiries to
5 determine whether the citation to “Public Law 681, Eighty-first Congress” is in proper
6 Legislative Counsel form.

7 CHAPTER 2. MANAGEMENT OF FISH AND WILDLIFE ON
8 MILITARY LANDS

9 **§ 4050. Statement of policy**

10 4050. It is the policy of the state to actively encourage the biologically sound
11 management of fish and other wildlife resources on lands administered by the
12 United States Department of Defense. The department may develop a program to
13 implement this article in cooperation with the military services.

14 **Comment.** Section 4050 continues former Section 3450 without change, except as indicated
15 below:

- 16 The following nonsubstantive change was made:
- 17 • The words “this article” were replaced with “this chapter.”

18 **§ 4055. Coordination and cooperation with military services**

19 4055. The department may coordinate and cooperate with all branches of the
20 United States military service, Department of Defense, for the purpose of
21 developing fish and wildlife management plans and programs on military
22 installations. The plans and programs shall be designed to provide biologically
23 optimum levels of fish and wildlife resource management and use compatible with
24 the primary military use of those lands. Military lands involved in programs
25 developed pursuant to this chapter shall not be available to the general public
26 without the consent of the military service administering the lands.

27 **Comment.** Section 4055 continues former Section 3451 without change, except as indicated
28 below:

- 29 The following nonsubstantive change was made:
- 30 • The words “this article” were replaced with “this chapter.”

31 **§ 4060. Regulations and agreements authorized**

32 4060. The commission may adopt regulations and authorize the department to
33 enter into agreements with the United States Department of Defense for the
34 administration of this chapter.

35 **Comment.** Section 4060 continues former Section 3452 without change, except as indicated
36 below:

- 37 The following nonsubstantive change was made:
- 38 • The words “this article” were replaced with “this chapter.”

1 **§ 4080. Consent of concerned county**

2 4080. Prior to approval by the commission under Section 4075, the legislative
3 body of the county concerned shall have given its written consent to the
4 commission for the proposed acquisition.

5 **Comment.** Section 4080 continues former Section 10681 without change, except as indicated
6 below:

7 The following nonsubstantive change was made:

- 8 • The words “such approval by the commission” were replaced with “approval by the
9 commission under Section 4075.”

10 **§ 4085. Insufficient payments from United States to county**

11 4085. (a) If in any year, on lands hereafter acquired, the in lieu payments from
12 the United States to the county, pursuant to the provisions of law, do not equal the
13 taxes assessed on a given project, the department shall pay from income derived
14 from hunting privileges on the project an amount equal to the balance of the taxes
15 on the entire project.

16 (b) For the purposes of this section, the taxes on a given project are the assessed
17 taxes on the project at the time of acquisition, plus any subsequent increases that
18 may accrue from general county increases in the tax rates, but not subject to re-
19 evaluation of the project properties after the time of acquisition.

20 **Comment.** Section 4085 continues former Section 10682 without change, except as indicated
21 below:

22 The following nonsubstantive changes were made:

- 23 • Subdivisions were added.
24 • The words “such project” were replaced with “the project.”

25 **Staff Note.** In the first sentence, the phrase “pursuant to the provisions of law” is ambiguous.
26 It could refer to the Migratory Bird Conservation Act, this chapter, or both. There is no appellate
27 decision construing the provision. **The staff requests public input on how to correctly resolve**
28 **the ambiguity.**

29 **§ 4090. Federal compliance with state law**

30 4090. The consent of the State to the acquisition by the United States of land,
31 water, or land and water for migratory bird reservations in accordance with this
32 article, is subject to the condition that the United States conform to the laws of the
33 State relating to the acquisition, control, use, and distribution of water with respect
34 to the land acquired.

35 **Comment.** Section 4090 continues former Section 10683 without change.

36 **§ 4095. Conditions on continuing consent**

37 4095. The consent contained in Section 4075 continues only so long as the
38 property continues to belong to the United States and is held by it in accordance
39 and in compliance with each and all of the conditions and reservations as
40 prescribed in this chapter, and is used for the purposes for which it was acquired.

1 **Comment.** Section 4095 continues former Section 10684 without change, except as indicated
2 below:

3 The following nonsubstantive changes were made:

- 4 • The words “this article” were replaced with “this chapter.”
- 5 • A cross-reference to former Section 10680 was updated.

6 **§ 4100. Additional consent**

7 4100. With the approval of the commission, the people of the State, through
8 their legislative authority, also consent to the declaration, withdrawal, or
9 determination of any part of any national forest or power site, and do further
10 consent to the condemnation of any lands lying and being below an elevation
11 known and described as minus 230-foot elevation below sea level, as a migratory
12 bird reservation under the provisions of the act of Congress cited in Section 4075.

13 **Comment.** Section 4100 continues former Section 10685 without change, except as indicated
14 below:

15 The following nonsubstantive change was made:

- 16 • A cross-reference to former Section 10680 was updated.

17 **PART 2. STATES AND OTHER JURISDICTIONS**

18 **CHAPTER 1. RECIPROCAL AGREEMENTS WITH ADJOINING**
19 **STATES**

20 **§ 4150. Reciprocal sport fishing license agreements**

21 4150. The commission, subject to the approval of the Attorney General, may
22 enter into reciprocal agreements with corresponding state or county official
23 agencies of adjoining states pertaining to the establishment of a basis whereby
24 valid sport fishing licenses issued by the parties to the reciprocal agreements may
25 be used by their licensees within the jurisdiction of either, in accordance with the
26 terms of the agreements.

27 **Comment.** Section 4150 continues former Section 390 without change, except as indicated
28 below:

29 The following nonsubstantive change was made:

- 30 • The words “such agreements” were replaced with “the agreements.”

31 **§ 4155. Reciprocal operational agreement with law enforcement**

32 4155. (a) The director, or a designated representative, may enter into reciprocal
33 operational agreements with authorized representatives of any Oregon, Nevada, or
34 Arizona state law enforcement agency, including, but not limited to, the Oregon
35 State Police, the Nevada Department of Wildlife, and the Arizona Game and Fish
36 Department, to promote expeditious and effective law enforcement service to the
37 public, and assistance between the members of the department and those agencies,

1 in areas adjacent to the borders of this state and each of the adjoining states
2 pursuant to Section 4110.

3 (b) The reciprocal operational agreement shall be in writing and may cover the
4 reciprocal exchange of law enforcement services, resources, facilities, and any
5 other necessary and proper matters between the department and the respective
6 agency.

7 (c) Any agreement shall specify all of the following:

8 (1) The involved departments, divisions, or units of the agencies.

9 (2) The duration and purpose of the agreement.

10 (3) Responsibility for damages.

11 (4) The method of financing any joint or cooperative undertaking.

12 (5) The methods to be employed to terminate an agreement.

13 (d) The director may establish operational procedures in implementation of any
14 reciprocal operational agreement that are necessary to achieve the purposes of the
15 agreement.

16 **Comment.** Section 4155 continues former Section 392 without change, except as indicated
17 below:

18 The following nonsubstantive change was made:

- 19 • A cross-reference to former Section 393 was updated.

20 **§ 4160. Status of law enforcement officers of adjoining states**

21 4160. (a) Any regularly employed law enforcement officer of an Oregon,
22 Nevada, or Arizona state law enforcement agency, including, but not limited to,
23 the Oregon State Police, the Nevada Department of Wildlife, or the Arizona Game
24 and Fish Department, is a peace officer in this state if all of the following
25 conditions are met:

26 (1) The officer is providing, or attempting to provide, law enforcement services
27 within this state, within a distance of up to 50 statute miles of the contiguous
28 border of this state and the state employing the officer, or within waters offshore
29 of this state in the Exclusive Economic Zone.

30 (2) The officer is providing, or attempting to provide, law enforcement services
31 pursuant to either of the following:

32 (A) In response to a request for services initiated by a member of the
33 department.

34 (B) In response to a reasonable belief that emergency law enforcement services
35 are necessary for the preservation of life, and a request for services by a member
36 of the department is impractical to obtain under the circumstances. In those
37 situations, the officer shall obtain authorization as soon as practical.

38 (3) The officer is providing, or attempting to provide, law enforcement services
39 for the purpose of assisting a member of the department in response to
40 misdemeanor or felony criminal activity, pursuant to the authority of a peace
41 officer as provided in subdivision (e) of Section 830.2 of the Penal Code, or, in the

1 event of emergency incidents or other similar public safety problems, whether or
2 not a member of the department is present at the scene of the event.

3 (4) An agreement pursuant to Section 4105 is in effect between the department
4 and the agency of the adjoining state employing the officer, the officer acts in
5 accordance with that agreement, and the agreement specifies that the officer and
6 employing agency of the adjoining state shall be subject to the same civil
7 immunities and liabilities as a peace officer and his or her employing agency in
8 this state.

9 (5) The officer receives no separate compensation from this state for providing
10 law enforcement services within this state.

11 (6) The adjoining state employing the officer confers similar rights and authority
12 upon a member of the department who renders assistance within that state.

13 (b) Notwithstanding any other provision of law, any person who is acting as a
14 peace officer in this state in the manner described in this section shall be deemed
15 to have met the requirements of Section 1031 of the Government Code and the
16 selection and training standards of the Commission on Peace Officer Standards
17 and Training if the officer has completed the basic training required for peace
18 officers in his or her state.

19 (c) A peace officer of an adjoining state shall not provide services within a
20 California jurisdiction during any period in which officers of the department are
21 involved in a labor dispute that results in a formal work slowdown or stoppage.

22 **Comment.** Section 4160 continues former Section 393 without change, except as indicated
23 below:

24 The following nonsubstantive changes were made:

- 25 • A cross-reference to former Section 392 was updated.
- 26 • The words “Department of Fish and Game” were replaced with “department.”

27 CHAPTER 2. INFORMATION RELEASE

28 § 4170. Release of information to other jurisdictions

29 4170. The department may exchange or release to any appropriate federal, state,
30 or local agency or agencies in other states, for purposes of law enforcement, any
31 information collected or maintained by the department under any provision of this
32 code or any regulation adopted pursuant to this code.

33 **Comment.** Section 4170 continues former Section 391 without change.

34 **Staff Note.** Under existing law, Section 391 is located in “Article 5. Reciprocal Agreements
35 With Adjoining States.” By its terms, the section is not restricted to reciprocal agreements. Nor is
36 it restricted to adjoining states. Given that application, the provision has been located in a chapter
37 with a more apt heading.

1

CHAPTER 2. CALIFORNIA-ARIZONA COMPACT

2 **§ 4175. California-Arizona Compact authorized**

3 4175. (a) The commission may negotiate the terms of a compact between the
4 States of Arizona and California with any appropriate officials of the State of
5 Arizona in relation to reciprocal privileges and licenses for hunting and fishing by
6 residents of one of the states within the territorial jurisdiction of the other. The
7 negotiations shall include, but shall not be limited to, provisions relating to sport
8 fishing and the hunting of migratory waterfowl in, on, or along the Colorado
9 River.

10 (b) It is the primary purpose of this section to provide a method whereby the
11 hunting and fishing opportunities afforded by the Colorado River may be mutually
12 enjoyed by the residents of the States of Arizona and California despite the
13 difficulties and inconveniences that result from the fact that the boundary line
14 between the States of Arizona and California is the middle of the channel of the
15 Colorado River.

16 **Comment.** Section 4175 continues former Section 375 without change, except as indicated
17 below:

18 The following nonsubstantive change was made:

- 19 • Subdivisions were added.

20

CHAPTER 3. WILDLIFE VIOLATOR COMPACT

21

Article 1. General Provisions

22 **§ 4200. Enactment of Wildlife Violator Compact**

23 4200. The Wildlife Violator Compact is hereby enacted into law and entered
24 into with all other participating states.

25 **Comment.** Section 4200 continues former Section 716 without change.

26 **§ 4205. Statement of policy**

27 4205. It is the policy of this state in entering into the compact to do all of the
28 following:

29 (a) Promote compliance with the statutes, ordinances, and administrative rules
30 and regulations relating to the management of wildlife resources in this state.

31 (b) Recognize the suspension of wildlife license privileges of any person whose
32 license privileges have been suspended by a participating state and treat that
33 suspension as if it had occurred in the licensee's home state if the violation that
34 resulted in the suspension could have been the basis for suspension in the home
35 state.

36 (c) Allow a violator, except as provided in subdivision (b) of Section 4400, to
37 accept a wildlife citation and, without delay or detention, proceed on his or her

1 way whether or not the violator is a resident of the state in which the citation was
2 issued, if the violator’s home state is a party to this compact.

3 (d) Report to the appropriate participating states, as provided in the compact
4 manual, any conviction recorded against any person whose home state was not the
5 issuing state.

6 (e) Allow the home state to recognize and treat convictions recorded against its
7 residents, if those convictions occurred in a participating state, as though they had
8 occurred in the home state.

9 (f) Extend cooperation to its fullest extent among the participating states for
10 enforcing compliance with the terms of a wildlife citation issued in one
11 participating state to a resident of another participating state.

12 (g) Maximize effective use of law enforcement personnel and information.

13 (h) Assist court systems in the efficient disposition of wildlife violations.

14 **Comment.** Section 4205 continues former Section 716.1 without change, except as indicated
15 below:

16 The following nonsubstantive change was made:

- 17 • A cross-reference to former Section 716.4 was updated.

18 **§ 4210. Purposes of chapter**

19 4210. The purposes of this chapter include both of the following:

20 (a) To provide a means by which participating states may join in a reciprocal
21 program to effectuate the policies enumerated in Section 4205 in a uniform and
22 orderly manner.

23 (b) To provide for the fair and impartial treatment of wildlife violators operating
24 within participating states in recognition of the violator’s right to due process and
25 the sovereign status of the participating states.

26 **Comment.** Section 4210 continues former Section 716.2 without change, except as indicated
27 below:

28 The following nonsubstantive change was made:

- 29 • A cross-reference to former Section 716.1 was updated.

30 **Article 2. Definitions**

31 **§ 4250. Application of article**

32 4250. The definitions in this article govern the construction of this chapter.

33 **Comment.** Section 4250 restates the introductory clause of former Section 716.3 without
34 substantive change.

35 **§ 4255. “Board”**

36 4255. “Board” means the board of compact administrators established pursuant
37 to Section 4500.

38 **Comment.** Section 4255 continues former Section 716.3(a) without change, except as
39 indicated below:

40 The following nonsubstantive change was made:

- 1 • A cross-reference to former Section 716.8 was updated.

2 **§ 4260. “Citation”**

3 4260. “Citation” means any summons, complaint, ticket, penalty assessment, or
4 other official document issued to a person by a wildlife officer or other peace
5 officer for a wildlife violation pertaining to sport fishing, hunting, or trapping,
6 which contains an order requiring the person to respond.

7 **Comment.** Section 4260 continues former Section 716.3(b) without change.

8 **§ 4265. “Collateral”**

9 4265. “Collateral” means any cash or other security deposited to secure an
10 appearance for trial in connection with the issuance by a wildlife officer or other
11 peace officer of a citation for a wildlife violation.

12 **Comment.** Section 4265 continues former Section 716.3(c) without change.

13 **§ 4270. “Compact manual”**

14 4270. “Compact manual” is a manual used and adopted by the participating
15 states that prescribes the procedures to be followed in administering the wildlife
16 violator compact in participating states.

17 **Comment.** Section 4270 continues former Section 716.3(d) without change.

18 **§ 4275. “Compliance”**

19 4275. “Compliance,” with respect to a citation, means the act of answering a
20 citation through an appearance in a court or tribunal, or through the payment of
21 fines, penalties, costs, and surcharges, if any.

22 **Comment.** Section 4275 continues former Section 716.3(e) without change.

23 **§ 4280. “Conviction”**

24 4280. “Conviction” means a conviction, including, but not limited to, any court
25 conviction for an offense related to sport fishing, hunting, or trapping, that is
26 prohibited by statute, ordinance, or administrative rule or regulation, that involves
27 the forfeiture of any bail, bond, or other security deposited to secure appearance
28 by a person charged with having committed an offense, the payment of a penalty
29 assessment, a plea of nolo contendere, and the imposition of a deferred or
30 suspended sentence by the court.

31 **Comment.** Section 4280 continues former Section 716.3(f) without change, except as indicated
32 below:

33 The following nonsubstantive change was made:

- 34 • The words “any such offense” were replaced with “an offense.”

35 **§ 4285. “Court”**

36 4285. “Court” means a court of law, including magistrate’s court and the justice
37 of the peace court.

1 **Comment.** Section 4285 continues former Section 716.3(g) without change.

2 **§ 4290. “Home state”**

3 4290. “Home state” means the state of primary residence of a person.

4 **Comment.** Section 4290 continues former Section 716.3(h) without change.

5 **§ 4295. “Issuing state”**

6 4295. “Issuing state” means the participating state that issues a wildlife citation
7 to the violator.

8 **Comment.** Section 4295 continues former Section 716.3(i) without change.

9 **§ 4300. “License”**

10 4300. “License” means any license, permit, entitlement to use, or other public
11 document that conveys to the person to whom it is issued the privilege of sport
12 fishing, hunting, or trapping, that is regulated by statute, ordinance, or
13 administrative rule or regulation of a participating state.

14 **Comment.** Section 4300 continues former Section 716.3(j) without change.

15 **§ 4305. “Licensing authority”**

16 4305. “Licensing authority,” with reference to this state, means the department,
17 which is the state agency authorized by law to issue or approve licenses or permits
18 to sport fish, hunt, or trap.

19 **Comment.** Section 4305 continues former Section 716.3(k) without change, except as
20 indicated below:

21 The following nonsubstantive change was made:

- 22 • The words “Fish and Game Code” were replaced with “department.”

23 **§ 4310. “Participating state”**

24 4310. “Participating state” means any state that enacts legislation to become a
25 member of the wildlife compact.

26 **Comment.** Section 4310 continues former Section 716.3(l) without change.

27 **§ 4315. “Personal recognizance”**

28 4315. “Personal recognizance” means an agreement by a person made at the
29 time of issuance of the wildlife citation that the person will comply with the terms
30 of the citation.

31 **Comment.** Section 4315 continues former Section 716.3(m) without change.

32 **§ 4320. “State”**

33 4320. “State” means any state, territory, or possession of the United States, the
34 District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada,
35 and other countries.

36 **Comment.** Section 4320 continues former Section 716.3(n) without change.

1 § 4325. “Suspension”

2 4325. “Suspension” means any revocation, denial, or withdrawal of any or all
3 license privileges, including the privilege to apply for, purchase, or exercise the
4 benefits conferred by any license for sport fishing, hunting, or trapping.

5 **Comment.** Section 4325 continues former Section 716.3(o) without change.

6 § 4330. “Terms of the citation”

7 4330. “Terms of the citation” means those conditions and options expressly
8 stated upon a citation.

9 **Comment.** Section 4330 continues former Section 716.3(p) without change.

10 § 4335. “Wildlife”

11 4335. “Wildlife” means all species of animals including, but not limited to,
12 mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are
13 defined as “wildlife” and are protected or otherwise regulated by statute,
14 ordinance, or administrative rule or regulation in a participating state. The species
15 included in the definition of “wildlife” vary from state to state and the
16 determination of whether a species is “wildlife” for the purposes of this compact
17 shall be based on the law of the participating state.

18 **Comment.** Section 4335 continues former Section 716.3(q) without change.

19 § 4340. “Wildlife law”

20 4340. “Wildlife law” means any statute, regulation, ordinance, or administrative
21 rule or regulation developed and enacted for the management of wildlife resources
22 and the uses thereof.

23 **Comment.** Section 4340 continues former Section 716.3(r) without change.

24 § 4345. “Wildlife officer”

25 4345. “Wildlife officer” means any individual authorized in this state to issue a
26 citation for a wildlife violation.

27 **Comment.** Section 4345 continues former Section 716.3(s) without change.

28 § 4350. “Wildlife violation”

29 4350. “Wildlife violation” means the violation of a statute, ordinance, or
30 administrative rule or regulation developed and enacted for the management of
31 wildlife resources and the uses thereof pertaining to sport fishing, hunting, and
32 trapping and for which a prosecution is initiated.

33 **Comment.** Section 4350 continues former Section 716.3(t) without change.

1 Article 3. Issuing State Violation Procedures

2 **§ 4400. Issuance of citation**

3 4400. (a) Notwithstanding any other provision of law, when issuing a citation
4 for a wildlife violation for purposes of this chapter, a wildlife officer of the issuing
5 state may issue a citation to any person whose primary residence is in a
6 participating state in the same manner as though the person were a resident of the
7 issuing state, and shall not require that person to post collateral to secure
8 appearance, except as provided in subdivision (b), if the officer receives the
9 personal recognizance of the person that he or she will comply with the terms of
10 the citation.

11 (b) Personal recognizance is acceptable unless prohibited by ordinance of a city
12 or county, the policy of the issuing agency, a procedure or regulation, or by the
13 compact manual, and only if the violator provides adequate proof of identification
14 to the wildlife officer.

15 (c) Upon conviction or failure of a person to comply with the terms of a wildlife
16 citation, the appropriate wildlife officer shall report the conviction or failure to
17 comply to the licensing authority of the participating state in which the wildlife
18 citation was issued. The report shall be made in accordance with procedures
19 specified by the issuing state, and shall contain information as prescribed in the
20 compact manual.

21 (d) Upon receipt of the report of conviction or noncompliance pursuant to
22 subdivision (c), the licensing authority of the issuing state shall transmit to the
23 licensing authority of the home state of the violator the information in the form
24 and content prescribed in the compact manual.

25 **Comment.** Section 4400 continues former Section 716.4 without change.

26 Article 4. Home State Procedures

27 **§ 4425. Action by home state**

28 4425. (a) Upon receipt of a report from the licensing authority of the issuing
29 state reporting the failure of a violator to comply with the terms of a citation, the
30 licensing authority shall notify the violator and shall initiate a suspension action.
31 The licensing authority shall suspend the violator's license privileges, in
32 accordance with the requirements of due process, until satisfactory evidence of
33 compliance with the terms of the wildlife citation has been furnished to the
34 licensing authority.

35 (b) Upon receipt of a report of conviction from the licensing authority of the
36 issuing state, the licensing authority of the home state may enter that conviction in
37 its records and may treat the conviction as though it occurred in the home state for
38 the purposes of the suspension of license privileges, if the violation that resulted in
39 the conviction would constitute a wildlife violation in the home state.

1 (c) The licensing authority of the home state shall maintain a record of actions
2 taken and shall make reports to issuing states as provided in the compact manual.

3 **Comment.** Section 4425 continues former Section 716.5 without change.

4 Article 5. Reciprocal Recognition of Suspension

5 § 4450. Recognition of suspension in other state

6 4450. (a) As a participating member of the wildlife violator compact, the
7 licensing authority of this state may recognize the suspension of license privileges
8 of any person by any participating state if both of the following occur:

9 (1) The violation that resulted in the conviction would constitute a wildlife
10 violation in this state.

11 (2) The conviction that resulted in the suspension could have been the basis for
12 suspension under the statutes, ordinances, or administrative rules or regulations of
13 this state.

14 (b) The licensing authority shall communicate suspension information to other
15 participating states in the form and content prescribed by the compact manual.

16 **Comment.** Section 4450 continues former Section 716.6 without change.

17 Article 6. Applicability of Other Laws

18 § 4475. Right of participating state to apply its own laws

19 4475. Except as expressly required by this chapter, this chapter shall not be
20 construed to affect the right of any participating state to apply any of its statutes,
21 ordinances, or administrative rules or regulations relating to license privileges to
22 any person or circumstance, or to invalidate or prevent any agreement or other
23 cooperative arrangement between a participating state and a nonparticipating state,
24 concerning wildlife law enforcement.

25 **Comment.** Section 4475 continues former Section 716.7 without change.

26 Article 7. Compact Administrator Procedures

27 § 4500. Establishment, duties, and powers

28 4500. (a)(1) A board of compact administrators is hereby established to serve as
29 a governing body for the resolution of all matters relating to the operation of this
30 compact. The board shall be composed of one member from each of the
31 participating states to be known as the compact administrator.

32 (2) A compact administrator of any participating state may provide for the
33 discharge of his or her duties and the performance of his or her functions as a
34 board member by an alternate, designated by that member. An alternate is not
35 entitled to serve unless written notification of his or her identity is provided to the
36 board.

1 (3) The compact administrator for this state shall be appointed by the director
2 and shall serve, and be subject to removal, in accordance with the laws of this
3 state.

4 (b) Each member of the board is entitled to one vote. No action of the board
5 shall be binding unless taken at a meeting at which a majority of the membership
6 of the board vote in favor thereof. Action by the board may only be taken at a
7 meeting at which a majority of the membership of the board is present.

8 (c) The board shall elect annually from its membership a chairperson and vice
9 chairperson.

10 (d) The board shall adopt bylaws, not inconsistent with this compact, and may
11 amend and rescind the bylaws.

12 (e) The board may accept for any of its purposes and functions under this
13 compact any donation and grant of money, equipment, supplies, materials, and
14 services, conditional or otherwise, from any state, the United States, or any
15 governmental agency, and may receive, utilize, and dispose thereof.

16 (f) The board may contract with, or accept services or personnel from, any
17 governmental or intergovernmental agency, individual, firm, or corporation,
18 including any private nonprofit organization or institution.

19 (g) The board shall formulate all necessary procedures and develop uniform
20 forms and documents for administering this compact. All procedures and forms
21 adopted pursuant to board action shall be contained in a compact manual.

22 **Comment.** Section 4500 continues former Section 716.8 without change.

23 Article 8. Entry Into Compact and Withdrawal

24 § 4525. Application of compact

25 4525. (a) This chapter shall become effective when it is adopted in substantially
26 similar form by this state and one or more other states, subject to the following
27 conditions:

28 (1) The entry into the compact shall be made by resolution executed and ratified
29 by authorized officials of the applying state and submitted to the chairperson of
30 the board of contract administrators.

31 (2) The resolution shall substantially be in the form and content as provided in
32 the compact manual, and shall include all of the following:

33 (A) A citation of the authority authorizing the state to become a party to this
34 compact.

35 (B) An agreement to comply with the terms and provisions of this compact.

36 (C) An agreement that the state entering into the compact agrees to participate
37 with all participating states in the compact.

38 (b) The effective date of entry into the compact shall be specified by the
39 applying state but shall not be less than 60 days after notice has been given by
40 either the chairperson or secretary of the board to each participating state that the
41 resolution from the applying state has been received.

1 (c) A participating state may withdraw from participation in this compact by
2 giving written notice to the compact administrator of each participating state. The
3 withdrawal shall not become effective until 90 days from the date on which the
4 written notice of withdrawal is sent to each participating state. The withdrawal of
5 any state shall not affect the validity of this compact as to the remaining
6 participating states.

7 **Comment.** Section 4525 continues former Section 716.9 without change, except as indicated
8 below:

9 The following nonsubstantive change was made:

- 10 • The words “at such time as” were replaced with “when.”

11 Article 9. Amendments to the Compact

12 § 4550. Amendment

13 4550. (a) This compact may be amended periodically. Amendments shall be
14 presented in resolution form to the chairperson of the board, and shall be initiated
15 by one or more participating states.

16 (b) The adoption of an amendment requires endorsement by all participating
17 states and becomes effective 30 days after the date of the last endorsement.

18 (c) The failure of any participating state to respond to the appropriate authority
19 within 60 days after receipt of a proposed amendment constitutes endorsement
20 thereof.

21 **Comment.** Section 4550 continues former Section 717 without change.

22 Article 10. Construction and Severability

23 § 4575. Liberal construction

24 4575. This compact shall be liberally construed to effectuate its purposes.

25 **Comment.** Section 4575 continues former Section 717.1 without change.

26 § 4580. Severability

27 4580. The provisions of this chapter are severable. If any provision of this
28 chapter or its application is held invalid or contrary to the constitution of any
29 participating state or of the United States, that invalidity shall not affect other
30 provisions or applications that can be given effect without the invalid provision or
31 application.

32 **Comment.** Section 4580 continues former Section 717.2 without change.

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CHAPTER 4. PACIFIC MARINE FISHERIES COMPACT

Article 1. The Compact

§ 4600. Authority to execute compact

4600. The Governor is hereby authorized and directed to execute a compact on behalf of this state with any or all of the States of Alaska, Idaho, Oregon and Washington for the purpose of cooperating with those states in the formation of a Pacific States Marine Fisheries Commission.

Comment. Section 4600 continues former Section 14000 without change.

§ 4605. Form and content of compact

4605. The form and contents of the Pacific Marine Fisheries Compact shall be substantially as provided in this section and the effect of its provisions shall be interpreted and administered in conformity with the provisions of this chapter:

PACIFIC MARINE FISHERIES COMPACT

The contracting states do hereby agree as follows:

Article I

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of those fisheries in all of those areas of the Pacific Ocean over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

Article II

This agreement shall become operative immediately as to those states executing it in the form that is in accordance with the laws of the executing state and when the Congress has given its consent.

Article III

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as the Pacific States Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of that state charged with the

1 conservation of the fisheries resources to which this compact pertains. This
2 commission shall be invested with the powers and duties set forth herein.

3 The term of each commissioner of the Pacific States Marine Fisheries
4 Commission shall be four years. A commissioner shall hold office until a
5 successor shall be appointed and qualified but the successor's term shall expire
6 four years from legal date of expiration of the term of the predecessor. Vacancies
7 occurring in the office of a commissioner from any reason or cause shall be filled
8 for the unexpired term, or a commissioner may be removed from office, as
9 provided by the statutes of the state concerned. Each commissioner may delegate
10 in writing from time to time, to a deputy, the power to be present and participate,
11 including voting as a representative or substitute, at any meeting of or hearing by
12 or other proceeding of the commission.

13 Voting powers under this compact shall be limited to one vote for each state
14 regardless of the number of representatives.

15 Article IV

16 The duty of the said commission shall be to make inquiry and ascertain from
17 time to time any methods, practices, circumstances and conditions as may be
18 disclosed for bringing about the conservation and the prevention of the depletion
19 and physical waste of the fisheries, marine, shell, and anadromous in all of those
20 areas of the Pacific Ocean over which the states signatory to this compact jointly
21 or separately now have or may hereafter acquire jurisdiction. The commission
22 shall have power to recommend the coordination of the exercise of the police
23 powers of the several states within their respective jurisdictions and said
24 conservation zones to promote the preservation of those fisheries and their
25 protection against overfishing, waste, depletion or any abuse whatsoever and to
26 assure a continuing yield from the fisheries resources of the signatory parties
27 hereto.

28 To that end the commission shall draft and, after consultation with the advisory
29 committee hereinafter authorized, recommend to the governors and legislative
30 branches of the various signatory states hereto legislation dealing with the
31 conservation of the marine, shell, and anadromous fisheries in all of those areas of
32 the Pacific Ocean over which the states signatory to this compact jointly or
33 separately now have or may hereafter acquire jurisdiction. The commission shall,
34 more than one month prior to any regular meeting of the legislative branch in any
35 state signatory hereto, present to the governor of that state its recommendations
36 relating to enactments by the legislative branch of that state in furthering the
37 intents and purposes of this compact.

38 The commission shall consult with and advise the pertinent administrative
39 agencies in the signatory states with regard to problems connected with the
40 fisheries and recommend the adoption of any regulations that it deems advisable
41 and which lie within the jurisdiction of the agencies.

1 The commission shall have power to recommend to the states signatory hereto
2 the stocking of the waters of the states with marine, shell or anadromous fish and
3 fish eggs or joint stocking by some or all of the states and when two or more of the
4 said states shall jointly stock waters the commission shall act as the coordinating
5 agency for the stocking.

6 Article V

7 The commission shall elect from its number a chairperson and a vice
8 chairperson and shall appoint and at its pleasure remove or discharge any officers
9 and employees as may be required to carry the provisions of this compact into
10 effect and shall fix and determine their duties, qualifications and compensation.
11 Said commission shall adopt rules and regulations for the conduct of its business.
12 It may establish and maintain one or more offices for the transaction of its
13 business and may meet at any time or place within the territorial limits of the
14 signatory states but must meet at least once a year.

15 Article VI

16 No action shall be taken by the commission except by the affirmative vote of a
17 majority of the whole number of compacting states represented at any meeting. No
18 recommendation shall be made by the commission in regard to any species of fish
19 except by the vote of a majority of the compacting states which have an interest in
20 the species.

21 Article VII

22 The fisheries research agencies of the signatory states shall act in collaboration
23 as the official research agency of the Pacific States Marine Fisheries Commission.
24 An advisory committee to be representative of the commercial fishers,
25 commercial fishing industry and any other interests of each state as the
26 commission deems advisable shall be established by the commission as soon as
27 practicable for the purpose of advising the commission upon any
28 recommendations as it may desire to make.

29 Article VIII

30 Nothing in this compact shall be construed to limit the powers of any state or to
31 repeal or prevent the enactment of any legislation or the enforcement of any
32 requirement by any state imposing additional conditions and restrictions to
33 conserve its fisheries.

34 Article IX

35 Continued absence of representation or of any representative on the commission
36 from any state party hereto, shall be brought to the attention of the governor
37 thereof.

1 Article X

2 The states agree to make available annual funds for the support of the
3 commission on the following basis:

4 Eighty percent of the annual budget shall be shared equally by those member
5 states having as a boundary the Pacific Ocean. Not less than 5 percent of the
6 annual budget shall be contributed by any other member state. The balance of the
7 annual budget shall be shared by those member states having as a boundary the
8 Pacific Ocean, in proportion to the primary market value of the products of their
9 commercial fisheries on the basis of the latest five-year catch records.

10 The annual contribution of each member state shall be figured to the nearest one
11 hundred dollars (\$100).

12 Article XI

13 This compact shall continue in force and remain binding upon each state until
14 renounced by it. Renunciation of this compact must be preceded by sending six
15 months' notice in writing of intention to withdraw from the compact to the other
16 parties hereto.

17 Article XII

18 Hawaii or any other state having rivers or streams tributary to the Pacific Ocean
19 may become a contracting state by enactment of the Pacific Marine Fisheries
20 Compact. Upon admission of any new state to the compact, the purposes of the
21 compact and the duties of the commission shall extend to the development of joint
22 programs for the conservation, protection and prevention of physical waste of
23 fisheries in which the contracting states are mutually concerned and to all waters
24 of the newly admitted state necessary to develop the programs.

25 This compact shall become effective upon its enactment by the states signatory
26 to this compact and upon ratification by Congress by virtue of the authority vested
27 in it under Article 1, Section 10, of the Constitution of the United States.

28 **Comment.** Section 4605 continues former Section 14001 without change, except as indicated
29 below:

30 The following nonsubstantive changes were made:

- 31 • In Article I, the words "such fisheries" were replaced with "those fisheries."
- 32 • In Article III, the words "such state" were replaced with "that state," the words "his
33 successor" were replaced with "a successor," the words "his predecessor" were
34 replaced with "the predecessor," the words "such successor's" were replaced with "the
35 successor's," the words "such commissioner" were replaced with "a commissioner,"
36 the words "such officers" were replaced with "any officers," and the words "his
37 representative" were replaced with "a representative."
- 38 • In Article IV, the words "such methods" were replaced with "any methods," the words
39 "such state" were replaced with "that state," the words "such regulations as" were
40 replaced with "any regulations that," the words "such agencies" were replaced with
41 "the agencies," the words "such states" were replaced with "the states," and the words
42 "such stocking" were replaced with "the stocking."
- 43 • In Article V, the words "chairman" and "vice chairman" were replaced with
44 "chairperson" and "vice chairperson," respectively.

- 1 • In Article VI, the words “such species” were replaced with “the species.”
- 2 • In Article VII, the word “fishermen” was replaced with “fishers,” the words “such
- 3 other interests” were replaced with “any other interests,” and the words “such
- 4 recommendations” were replaced with “any recommendations.”
- 5 • In Article XII, the words “such programs” were replaced with “the programs.”

6 **§ 4610. Operation of compact**

7 4610. Participation by this State in this compact shall continue until the
8 Legislature otherwise provides by law. Notice of intention to withdraw from the
9 compact shall be executed and transmitted by the Governor after the Legislature
10 provides by law for discontinuance of participation therein by this State.

11 **Comment.** Section 4610 continues former Section 14002 without change, except as indicated
12 below:

13 The following nonsubstantive change was made:

- 14 • The words “such compact” were replaced with “the compact.”

15 **Article 2. The Commission**

16 **§ 4625. Members**

17 4625. In furtherance of the provisions contained in the compact there shall be
18 three members of the Pacific States Marine Fisheries Commission from the State
19 of California, appointed by the Governor by and with the advice and consent of
20 the Senate. One commissioner shall be the administrative or other officer of the
21 department or agency of this state charged with the conservation of its marine
22 fisheries resources. Another commissioner shall be a Member of the Legislature of
23 this state who is a member of a committee on interstate cooperation of the
24 Legislature. Another member shall be a citizen of this state who shall have wide
25 knowledge of and interest in the marine fisheries problem.

26 **Comment.** Section 4625 continues former Section 14100 without change, except as indicated
27 below:

28 The following nonsubstantive changes were made:

- 29 • The word “such” was omitted.
- 30 • The final sentence was divided into three sentences.
- 31 • The words “said Legislature” were replaced with “Legislature.”

32 **§ 4630. Term**

33 4630. The term of each commissioner shall be four years. A commissioner shall
34 hold office until a successor shall be appointed and qualified but the successor’s
35 term shall expire four years from the legal date of expiration of the term of the
36 predecessor. Any commissioner may be removed from office by the Governor
37 upon charges and after a hearing. The term of any commissioner who ceases to
38 hold the qualifications required shall terminate when a successor may be duly
39 appointed. Vacancies occurring in the office of a commissioner from any reason or
40 cause shall be filled for the unexpired term in the same manner as for a full term
41 appointment.

1 **Comment.** Section 4630 continues former Section 14101 without change, except as indicated
2 below:

3 The following nonsubstantive changes were made:

- 4 • The words “his successor” were replaced with “a successor.”
- 5 • The words “such successor’s” were replaced with “the successor’s.”
- 6 • The words “his predecessor” were replaced with “the predecessor.”

7 **§ 4635. Compensation**

8 4635. Each commissioner who is not also a state officer shall receive one
9 hundred dollars (\$100) for each day of actual service performed in carrying out
10 official duties pursuant to the directions of the commission, and each
11 commissioner shall receive actual and necessary travel expenses incurred in the
12 performance of official duties in behalf of the commission.

13 **Comment.** Section 4635 continues former Section 14102 without change, except as indicated
14 below:

15 The following nonsubstantive changes were made:

- 16 • The words “his official” were replaced with “official.”
- 17 • The words “his actual” were replaced with “actual.”
- 18 • The \$10 per diem allowance was increased to \$100, pursuant to Government Code
19 Section 11564.5.

20 **Staff Note.** Section 14102 provides for a per diem of \$10. That provision appears to be
21 obsolete. See Gov’t Code § 11564.5 (default per diem is \$100, notwithstanding any other
22 provision of law). Proposed Section 4635 provides for the \$100 per diem provided under the
23 Government Code. **The staff invites public comment on whether this revision would be
24 consistent with existing practice.**

25 **§ 4640. Performance**

26 4640. All officers of the State are authorized and directed to do all things falling
27 within their respective provinces and jurisdiction necessary or incidental to the
28 carrying out of the compact in every particular. The policy of this State is to
29 perform and carry out the compact and to accomplish the purposes thereof. All
30 officers, bureaus, departments, and persons of and in the State Government or
31 administration of the State are hereby authorized and directed at convenient times
32 and upon request of the commission to furnish the commission with information
33 and data possessed by them and to aid the commission by any means lying within
34 their legal rights.

35 **Comment.** Section 4640 continues former Section 14103 without change, except as indicated
36 below:

37 The following nonsubstantive change was made:

- 38 • A comma was added after “departments.”

39 **§ 4645. Annual report**

40 4645. The commission shall keep accurate accounts of its activities and shall
41 report to the Governor and the Legislature on or before the thirty-first day of
42 December in each year, setting forth in detail the transactions conducted by it

1 during that calendar year and shall make recommendations for any legislative
2 action deemed by it advisable, including amendments to the statutes which may be
3 necessary to carry out the intent and purposes of the compact between the
4 signatory states.

5 **Comment.** Section 4645 continues former Section 14104 without change.

6 **§ 4650. Execution of compact**

7 4650. When the Governor on behalf of the State executes the compact, the
8 Governor shall sign under a recital that the compact is executed pursuant to the
9 provisions thereof, subject to the limitations and qualifications contained in the
10 sections of this chapter in aid and furtherance thereof.

11 **Comment.** Section 4650 continues former Section 14105 without change, except as indicated
12 below:

13 The following nonsubstantive changes were made:

- 14 • The words “such compact” were replaced with “the compact.”
- 15 • The word “he” was replaced with “the Governor.”
- 16 • The words “attach his signature thereto” were replaced with “sign.”
- 17 • The words “this division” were replaced with “this chapter.”

18 **PART 3. TRIBAL GOVERNMENTS**

19 **CHAPTER 1. STATE-TRIBAL AGREEMENTS GOVERNING**
20 **INDIAN FISHING**

21 **Article 1. Legislative Findings**

22 **§ 4700. Findings**

23 4700. The Legislature finds:

24 (a) Jurisdiction over the protection and development of natural resources,
25 especially the fish resource, is of great importance to both the State of California
26 and California Indian tribes.

27 (b) To California Indian tribes, control over their minerals, lands, water,
28 wildlife, and other resources is crucial to their economic self-sufficiency and the
29 preservation of their heritage. On the other hand, the State of California is
30 concerned about protecting and developing its resources; protecting, restoring, and
31 developing its commercial and recreational salmon fisheries; ensuring public
32 access to its waterways; and protecting the environment within its borders.

33 (c) More than any other issue confronting the State of California and California
34 Indian tribes, the regulation of natural resources, especially fish, transcends
35 political boundaries.

36 (d) In many cases, the State of California and California Indian tribes have
37 differed in their respective views of the nature and extent of state versus tribal
38 jurisdiction in areas where Indians have historically fished. Despite these frequent

1 and often bitter disputes, both the state and the tribes seek, as their mutual goal,
2 the protection and preservation of the fish resource. This chapter is an attempt to
3 provide a legal mechanism, other than protracted and expensive litigation over
4 unresolved legal issues, for achieving that mutual goal.

5 (e) This chapter creates a pilot project that will involve and encourage the efforts
6 of the State of California and the Covelo Indian Community of the Round Valley
7 Indian Reservation to reach a mutual agreement regarding the legal framework for
8 the exercise of Indian subsistence fishing in the boundary streams of the historic
9 1873 Round Valley Indian Reservation. It is hoped that this pilot project, if
10 successful, will provide the incentive for enactment of broader legislation that
11 would authorize similar negotiated agreements with other California Indian tribes.

12 **Comment.** Section 4700 continues former Section 16000 without change, except as indicated
13 below:

14 The following nonsubstantive change was made:

- 15 • The words “this division” were replaced with “this chapter.”

16 Article 2. Definitions

17 § 4710. Application

18 4710. The definition in this article shall govern the construction of this chapter.

19 **Comment.** Section 4710 continues former Section 16001 without change except as indicated
20 below:

21 The following nonsubstantive change was made:

- 22 • The words “this chapter” were replaced with “this article.”
- 23 • The words “this division” were replaced with “this chapter.”

24 § 4715. “Covelo Indian Community”

25 4715. “Covelo Indian Community” means the confederated tribes of the Round
26 Valley Indian Reservation located in Mendocino County, California, recognized as
27 an Indian tribe by the Secretary of the Interior.

28 **Comment.** Section 4715 continues former Section 16002 without change.

29 § 4720. “Take”

30 4720. “Take” means pursue, catch, capture, or kill, or attempt to pursue, catch,
31 capture, or kill.

32 **Comment.** Section 4720 continues former Section 16003 without change.

33  **Staff Note.** The definition in Section 16003 is nearly identical to the definition in Section 86,
34 which applies to the entire code (Section 86 adds the word “hunt” to the list of verbs used in the
35 definition). **Can Section 16003 be omitted in reliance on Section 86?**

36 § 4725. “Traditional Indian fishing practice”

37 4725. “Traditional Indian fishing practice” means a mode, method, or way of
38 taking fish that is recognized in the customs and traditions of the Covelo Indian
39 Community.

1 meeting. The commission shall make copies of the proposed agreement or
2 compact available to the public on request and the notice shall contain a statement
3 to that effect. All meetings required by this section shall be open to the public.

4 **Comment.** Section 4765 continues former Section 16009 without change, except as indicated
5 below:

6 The following nonsubstantive change was made:

- 7 • The words “this division” were replaced with “this chapter.”

8 Article 4. Enforceability of an Agreement or Compact

9 § 4775. Enforcement

10 4775. Any agreement or compact entered into pursuant to this chapter shall be
11 enforceable by the parties only to the extent and in the forum or forums provided
12 for under the terms of the agreement or compact.

13 **Comment.** Section 4775 continues former Section 16010 without change, except as indicated
14 below:

15 The following nonsubstantive change was made:

- 16 • The words “this division” were replaced with “this chapter.”

17 § 4780. Regulations

18 4780. The department may promulgate regulations consistent with the
19 provisions of any agreement or compact entered into pursuant to Section 4750.
20 The application and enforcement of those regulations shall be in accordance with
21 the express provisions of the agreement or compact.

22 **Comment.** Section 4780 continues former Section 16011 without change except as indicated
23 below:

24 The following nonsubstantive change was made:

- 25 • A cross-reference to Section 16006 was updated.

26 CHAPTER 2. STATE-TRIBAL AGREEMENTS GOVERNING 27 INDIAN FISHING ON THE KLAMATH RIVER

28 Article 1. Legislative Findings

29 § 4800. Findings

30 4800. The Legislature finds:

31 (a) Jurisdiction over the protection and development of natural resources,
32 especially the fish resource, is of great importance to both the State of California
33 and California Indian tribes.

34 (b) To California Indian tribes, control over their minerals, lands, water,
35 wildlife, and other resources within Indian country is crucial to their economic
36 self-sufficiency and the preservation of their heritage. On the other hand, the State
37 of California is concerned about protecting and developing its resources;

1 protecting, restoring, and developing its commercial and recreational salmon
2 fisheries; ensuring public access to its waterways; and protecting the environment
3 within its borders.

4 (c) More than any other issue confronting the State of California and California
5 Indian tribes, the regulation of natural resources, especially fish, transcends
6 political boundaries.

7 (d) In many cases, the State of California and California Indian tribes have
8 differed in their respective views of the nature and extent of state versus tribal
9 jurisdiction in areas where Indians have historically fished. Despite these frequent
10 and often bitter disputes, both the state and the tribes seek, as their mutual goal,
11 the protection and preservation of the fish resource. This chapter is an attempt to
12 provide a legal mechanism, other than protracted and expensive litigation over
13 unresolved legal issues, for achieving that mutual goal on the Klamath River.

14 (e) The Department of Fish and Game has exercised jurisdiction over the
15 Klamath River from the mouth of the river through the Yurok Reservation and the
16 Hoopa Valley Reservation, but the Bureau of Indian Affairs and the Indian tribes
17 thereon have also asserted jurisdiction over that river. The river itself lies within a
18 disputed area and proper management of the resource presents, therefore, unique
19 and difficult problems in the exercise of fishing practices by all users groups.

20 (f) Although commercial fishing may not be a traditional practice of the tribes
21 existing along the Klamath River within the boundaries of the land of the Yurok
22 Reservation and the Hoopa Valley Reservation, nevertheless, the Department of
23 Fish and Wildlife has historically supported the concept of tribal fishing, including
24 a tribal commercial fishing industry where the industry is consistent with the need
25 to preserve the species, sound management, and where that usage would not
26 adversely effect other user groups, including sportfishing and the ocean
27 commercial fishery.

28 (g) A commercial fishery existed on the Klamath River in the late 19th century
29 and early 20th century, in which the Indian tribes existing along the river
30 participated, but the commercial fishing was abolished in 1933 with the passage of
31 the predecessor to **Section 8434**, and, further, salmon resources have declined
32 historically due to past water developmental policies and timber harvesting
33 practices. With a reduced number of fish available, special laws are needed to
34 protect those resources and allocate them fairly among the various user groups.

35 (h) This chapter is not only enacted to provide the legal mechanism described
36 above, but is also intended to encourage cooperative agreements to allow
37 protection of the resource among all of the user groups. In so doing, the
38 Legislature recognizes the unique status of the Klamath River and the fishing
39 therein.

40 **Comment.** Section 4800 continues former Section 16500 without change, except as indicated
41 below:

42 The following nonsubstantive changes were made:

- 43 • The words “this division” were replaced with “this chapter.”

- 1 • The words “Fish and Game” were replaced with “Fish and Wildlife.”
- 2 • The words “such usage” were replaced with “that usage.”
- 3 • Throughout subdivisions (e) and (g), the word “that” has been omitted.

4 Article 2. Definitions

5 **§ 4810. Application**

6 4810. The definition in this article shall govern the construction of this chapter.

7 **Comment.** Section 4810 continues former Section 16510 without change, except as indicated
8 below:

9 The following nonsubstantive changes were made:

- 10 • The words “this chapter” were replaced with “this article.”
- 11 • The words “this division” were replaced with “this chapter.”

12 **§ 4815. “Ceremonial or religious purposes”**

13 4815. “Ceremonial or religious purposes” means fish taken by qualified Indian
14 tribal members of the Klamath River Indian Tribes for recognized religious or
15 ceremonial activities, which activities are consistent with the customs and
16 traditions of the particular tribe in the Klamath River Indian Tribes.

17 **Comment.** Section 4815 continues former Section 16517 without change.

18 **§ 4820. “Commercial fishing”**

19 4820. “Commercial fishing” means the taking of fish by qualified Indian tribal
20 members of the Klamath River Indian Tribes, for sale or to be offered for sale
21 within California.

22 **Comment.** Section 4820 continues former Section 16518 without change.

23 **§ 4825. “Disputed area”**

24 4825. “Disputed area” means that part of the Klamath River or Trinity River
25 where jurisdiction to regulate Indian fishing is asserted by both the State of
26 California and by one or more of the Indian tribes in the Klamath River Indian
27 Tribes or by the United States government acting as trustee therefor.

28 **Comment.** Section 4825 continues former Section 16515 without change.

29 **§ 4830. “Klamath Fishery Management Council”**

30 4830. “Klamath Fishery Management Council” means that council created
31 pursuant to Section 46055 of Title 16 of the United States Code which is
32 composed of one representative each from the Pacific Fishery Management
33 Council, National Marine Fisheries Service, Department of the Interior, Oregon
34 Department of Fish and Wildlife, California Department of Fish and Game, the
35 Hoopa Valley Business Council, non-Hoopa Indians, the California commercial
36 salmon fishing industry, the Oregon commercial salmon fishing industry, the
37 Klamath River in-river sportfishing community, and the California offshore
38 recreational fishing industry.

1 regarding the taking of fish from the Klamath River within the exterior boundaries
2 of the Yurok Reservation.

3 **Comment.** Section 4875 continues former Section 16530 without change.

4 **§ 4880. Negotiations**

5 4880. Negotiations shall take place following the completion each year of the
6 salmon allocation agreement recommended by the Klamath Fishery Management
7 Council, and subsequently adopted by the Pacific Fishery Management Council
8 and the United States Department of Commerce. Any agreement or compact under
9 this chapter shall reflect those allocations.

10 **Comment.** Section 4880 continues former Section 16531 without change, except as indicated
11 below:

12 The following nonsubstantive change was made:

- 13 • The words “this division” were replaced with “this chapter.”

14 **§ 4885. Commercial sale of salmon**

15 4885. Notwithstanding **Sections 8434, 8685.5, 8685.6, and 8685.7**, the compact
16 or agreement may include provisions for commercial sales of salmon allocated to
17 qualified Indian members of the Klamath River Indian Tribes and that the salmon
18 may be taken by traditional Indian methods, including, but not limited to, use of
19 gill nets, if the agreement or compact includes provisions for all of the following:

20 (a) Separating the salmon taken for commercial purposes from the salmon taken
21 for subsistence use, which may include tagging or marking of the salmon to be
22 sold.

23 (b) Limiting the number of the salmon to be sold.

24 (c) A portion of the sales to benefit the members or programs of the Klamath
25 River Indian Tribes in accordance with the wishes of the tribes or the Bureau of
26 Indian Affairs acting on behalf of the tribes as trustee.

27 **Comment.** Section 4885 continues former Section 16532 without change.

28 **Article 4. Enforceability of an Agreement or Compact**

29 **§ 4900. Enforcement**

30 4900. Any agreement or compact entered into pursuant to this chapter shall be
31 enforceable by the parties only to the extent and in the form or forms provided for
32 under the terms of the agreement or compact.

33 **Comment.** Section 4900 continues former Section 16540 without change, except as indicated
34 below:

35 The following nonsubstantive change was made:

- 36 • The words “this division” were replaced with “this chapter.”

1 **§ 4905. Regulations**

2 4905. The department may adopt regulations consistent with the provisions of
3 any agreement or compact entered into pursuant to Section 4875 or 4880. The
4 application and enforcement of those regulations shall be in accordance with the
5 express provisions of the agreement or compact.

6 **Comment.** Section 4905 continues former Section 16541 without change, except as indicated
7 below:

8 The following nonsubstantive change was made:

- 9 • Cross-references to former Sections 16530 and 16531 were updated.

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Fish and Game Code and the corresponding provision of the proposed law (if any).

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
390	4150	10680	4075
391	4170	10681	4080
392	4155	10682	4085
393	4160	10683	4090
375	4175	10684	4095
400	4000	10685	4100
401	4005	14000	4600
716	4200	14001	4605
716.1	4205	14002	4610
716.2	4210	14100	4625
716.3, 1st cl.	4250	14101	4630
716.3(a)	4255	14102	4635
716.3(b)	4260	14103	4640
716.3(c)	4265	14104	4645
716.3(d)	4270	14105	4650
716.3(e)	4275	16000	4700
716.3(f)	4280	16001	4710
716.3(g)	4285	16002	4175
716.3(h)	4290	16003	4720
716.3(i)	4295	16004	4725
716.3(j)	4300	16005	4730
716.3(k)	4305	16006	4750
716.3(l)	4310	16007	4755
716.3(m)	4315	16008	4760
716.3(n)	4320	16009	4765
716.3(o)	4325	16010	4775
716.3(p)	4330	16011	4780
716.3(q)	4335	16500	4800
716.3(r)	4340	16510	4810
716.3(s)	4345	16511	4835
716.3(t)	4350	16512	4845
716.4	4400	16513	4850
716.5	4425	16514	4855
716.6	4450	16515	4825
716.7	4475	16516	4840
716.8	4500	16517	4815
716.9	4525	16518	4820
717	4550	16520	4830
717.1	4575	16530	4875
717.2	4580	16531	4880
3450	4050	16532	4885
3451	4055	16540	4900
3452	4060	16541	4905
3453	4065		