

Memorandum 2014-7

**Fish and Game Law: Public Comment on
Division 3 (Law Enforcement)**

Memorandum 2013-37 presented a draft of Division 3 of the proposed Fish and Wildlife Code, which was entitled "Law Enforcement."¹

On October 8, 2013, the Commission received a letter from Kevin Hunting, Chief Deputy Director of the Department of Fish and Wildlife (the "Department"), commenting on four provisions in the draft attached to Memorandum 2013-37. **The staff greatly appreciates the Department's continued assistance.**

That letter is attached to this memorandum as an Exhibit. The issues raised in the letter are discussed below.

Unless otherwise indicated, all statutory references in this memorandum are to the existing Fish and Game Code, or to the "proposed" provisions of the contemplated Fish and Wildlife Code.

REFERENCE TO PENALTY PROVISIONS

Proposed Section 3320 would continue existing Section 12014 verbatim. It authorizes the Department to obtain a court judgment to enforce an administrative penalty. Proposed Section 3320 presently reads as follows:

After the expiration of the time period to appeal an administrative penalty imposed pursuant to Section 2301, 2302, 2582, or 2583, or any other provision of this code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative civil penalty. The application, including a certified copy of the order imposing the civil penalty, a hearing officer's decision, if any, or a settlement agreement, if any, shall

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.

constitute a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

A Staff Note following the proposed section questions whether it is necessary to include the enumerated sections in the first sentence, suggesting that the same meaning could be conveyed more simply by referring to “an administrative penalty imposed pursuant to a provision of this code.”

The Department recommends against deleting the list of sections.² It suggests that doing so could cause confusion between administrative penalties (which are imposed by the Department) and civil penalties (which are ordered by a court).

Analysis

Although it does not seem to be strictly necessary to include the list of examples (because they all fall into the class that is described in the catch-all language), such a list could help to make the meaning of the section clearer. Each listed example addresses a penalty imposed by the Department, so by illustration the list may help to distinguish administrative penalties from court ordered penalties. Moreover, the staff sees no harm in including the list of examples, because it is sufficiently clear that the list is not intended to be exclusive. **For those reasons, the staff recommends that the list of examples be retained.**

However, the Department’s comment raises a broader issue that is worth discussing. The Department is concerned that there be no confusion between Department-ordered “administrative penalties” and court-ordered “civil penalties.” Unfortunately, existing Section 12014 uses both terms. It also blends them, referring to an “administrative civil penalty.” None of these terms are defined anywhere in the code, and the use of three different terms to refer to one type of penalty could be confusing.

The text of the four code sections listed in Section 12014 could compound the problem, as those sections variously refer to a “penalty,”³ a “civil penalty,”⁴ and “civil liability”⁵ (another term that is not defined).

2. Exhibit.

3. Existing Section 2301(f)(1).

4. Existing Sections 2302(f), 2583(a).

5. Existing Section 2582(a)-(c).

The staff believes it would be helpful to clarify and standardize the use of these terms, to the greatest extent possible. If the Commission agrees, the staff will address the matter in a future memorandum.

PRESUMED CONSENT ITEMS

The remaining items in Mr. Hunting's letter involve very minor and straightforward revisions. **The staff does not plan to discuss these items at the upcoming meeting and will presume that they are approved unless the Commission indicates otherwise.**

Employees Deputized for Limited Purpose

Proposed Section 3010, which would continue existing Section 853, restates the last sentence of that provision to improve its clarity. A note asked for comment on whether the restatement would inadvertently cause any substantive change to the meaning of the provision.

With the last sentence italicized for emphasis, existing Section 853 provides:

853. The director may deputize any employee of the department to check persons for licenses required under Section 7145 and to enforce any violation of that section. Before a person is deputized pursuant to this section for the first time, the person shall have satisfactorily completed a training course meeting the minimum standards of, and comparable to, the training for "level III reserve" as set forth in the regulations of the Commission on Peace Officer Standards and Training. *Any person, who is deputized for this limited purpose pursuant to this section, may not enforce any other provision of this code, and is not a peace officer subject to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.*

Proposed Section 3010 would read as follows (with the restated sentence italicized for emphasis):

3010. (a) The director may deputize any employee of the department to check persons for licenses required under Section 7145 and to enforce any violation of that section.

(b) Before a person is deputized pursuant to this section for the first time, the person shall have satisfactorily completed a training course meeting the minimum standards of, and comparable to, the training for "level III reserve" as set forth in the regulations of the Commission on Peace Officer Standards and Training.

(c) *A person who is deputized for the limited purpose stated in subdivision (a) may not enforce any other provision of this code. Being deputized under this section does not make a person a peace officer subject*

to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

The Department agrees that the proposed restatement would not cause a substantive change in the meaning of the provision.⁶ **Based on that input, the staff recommends that existing Section 853 be restated as proposed.**

Shorthand Reference to “Department”

The Department points out that proposed Section 3015 refers to the “Department of Fish and Wildlife” rather than using the equivalent defined term, “department.”⁷ They suggest that the defined term be used. **The staff agrees and recommends that the provision and its Comment be revised accordingly.**

Separation of Substantive Mandate

Proposed Section 3220 would continue Section 12028, but would restructure the use of subdivision and paragraph designators, in order to better differentiate between legislative findings and substantive provisions, thus:

3220. (a) The Legislature finds and declares that:

~~(a)~~ (1) Poaching violations and other violations of the Fish and Game Code have been increasing, and these violations have a detrimental impact on fish and wildlife and their habitats, which are held in trust by the state for the benefit of the people of the state.

~~(b)~~ (2) In order to deter illegal poaching and other violations that adversely impact fish and wildlife, it is important that the department coordinate with other law enforcement entities and the courts to facilitate effective enforcement and prosecution of these offenses.

~~(c)~~ (b) The department, to the extent feasible and subject to available resources, shall establish and coordinate an environmental crimes task force. The task force should involve the participation of the department’s Office of General Counsel working with each of the department’s law enforcement districts. The task force may include coordination with representatives from the California District Attorneys’ Association, the Judicial Council, the Attorney General’s office, and the University of California. Objectives of the task force may include, but are not limited to, providing training, education, and outreach to prosecutors and the courts on Fish and Game Code violations and providing other

6. Exhibit.

7. See existing Section 37; proposed Section 175.

assistance as appropriate in the prosecution of environmental crimes.

A Staff Note following Section 3220 asks whether this redesignation is appropriate, and the Department agrees that it is.⁸ **Based on that input, the staff recommends that existing Section 12028 be restated as proposed Section 3020.**

Respectfully submitted,

Steve Cohen
Staff Counsel

8. Exhibit.



VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

October 8, 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: Comments on Memorandum 2013-37

Dear Ms. Carrion:

Regarding CLRC memorandum 2013-37, the Department of Fish and Wildlife has the following comments:

Division 3: Law Enforcement, Part 1. Personnel, Chapter 1. Department

- **§ 3010. Employee deputized to check sport fishing licenses:** Department staff agrees that the proposed restatement would not cause a substantive change in the meaning of the provision.
- **§ 3015. Minimum age of wildlife officer:** Department staff notes that nearby sections simply refer to us as the “department”, so there is no need to continue spelling out and capitalizing the entire name of DFW here.
- **§ 3220. Environmental crimes task force:** Department staff agrees that the proposed change in subdivisions is appropriate.
- **§ 3320. Administrative penalty:** Department staff recommends maintaining the existing language of the specified sections. There may be some confusion between administrative penalties that the Department imposes, and court ordered civil penalties (Fish and Game Code §1615.)

Sincerely,

Kevin Hunting
Chief Deputy Director