

Memorandum 2015-40

**Fish and Game Law:
Technical Revisions and Minor Substantive Improvements: Part 2
(Draft Recommendation)**

The Commission¹ is presently preparing a recodification of the Fish and Game Code.² While that work proceeds, the Commission has decided to separately recommend to the Legislature interim revisions of the code, in order to provide more immediate improvement of existing law.³

In February 2015, the Commission submitted the first of these interim recommendations to the Legislature.⁴ That recommendation was enacted on August 10, 2015.⁵

In June 2015, the Commission circulated a second interim proposal, a Tentative Recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 2)*, with a request that public comment be submitted by September 1, 2015. The Commission has received a letter commenting on that tentative recommendation from the California Department of Fish and Wildlife (hereafter, "Department"), which is attached as an Exhibit.

This memorandum presents analysis of the Department's comments, and recommends minor changes to the proposed legislation. For convenience of reference, the recommended changes have been implemented in the attached draft recommendation. If the Commission decides against making any of those changes, the staff will reverse them.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code.

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.

2. See Memorandum 2012-41.

3. Minutes (Feb. 2014), p. 13.

4. See *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*.

5. See 2015 Cal. Stat. ch. 154.

FISH AND GAME COMMISSION REGULATORY AUTHORITY

The letter from the Department comments on three distinct aspects of the tentative recommendation, all of which involve the regulatory authority of the Fish and Game Commission (hereafter, "FGC").

Consolidation of Fish and Game Code Sections 200 and Related Provisions

One of the central functions of the FGC is to adopt regulations governing the take and possession of wild animals. General authority to adopt such regulations is granted to the FGC in the first paragraph of Section 200.⁶ That general authority is then limited in the second paragraph of Section 200, and in Sections 201 and 204.

The tentative recommendation would have combined Sections 200, 201, and 204, to read as follows:

200. (a) There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibians, and reptiles.

(b) No power is delegated to the commission by this section to regulate any of the following:

(1) The taking, possessing, processing, or use of fish, amphibians, kelp, or other aquatic plants for commercial purposes.

(2) Any natural resource or activity connected with a natural resource.

(3) The taking or possession of a spike buck or spotted fawn. "Spotted fawn" means a deer one year of age or less that has spotted pelage. "Spike buck" means a male deer with unbranched antlers on both sides that are more than three inches in length.

(c) This section and any regulations adopted pursuant to this section have no effect on any provision of this code or any regulation adopted pursuant to this code that relates to a matter described in paragraph (1) of subdivision (b).

Comment. Section 200 is amended to delete a reference to the "extent and manner" of regulations. Rules formerly located in this article have been repealed or relocated. See Sections 250-285 (procedure).

The section is also amended to add subdivision and paragraph designations, and make other nonsubstantive changes.

6. The FGC has also been granted authority to regulate in more specifically described circumstances, by other existing code provisions. See, e.g., Sections 306 (closure of area due to fire hazard), 325 (special hunting season to address population increases that create surplus, property damage, or overgrazing), 331 (taking or possession of antelope), 332 (taking or possession of elk), and 10500 to 10506 (taking or possession in refuges).

Subdivision (a) restates the first paragraph of Section 200.

Subdivision (b)(1) continues the first part of the second paragraph of Section 200 without substantive change.

Subdivision (b)(2) continues former Section 201 without substantive change.

Subdivision (b)(3) continues former Section 204(d) without substantive change.

Subdivision (c) restates the second part of the second paragraph of Section 200 without substantive change.

As indicated in the Comment above, proposed Section 200(b)(2) was drawn from existing Section 201, which provides:

201. Nothing in this article confers upon the commission any power to regulate any natural resources or commercial or other activity connected therewith, except as specifically provided.

The Department objects to the proposed deletion of the last clause of Section 201 (“except as specifically provided”). It asserts that the deleted language is necessary to avoid a conflict between proposed Section 200(b)(2), which limits FGC regulation of “natural resources,” and proposed Section 200(a), which authorizes the FGC to regulate specific *types* of “natural resources” (i.e., birds, mammals, fish, amphibians, and reptiles). The Department believes that the “except as specifically provided” language reconciles the two provisions, by excluding FGC’s authority to regulate birds, mammals, fish, amphibians, and reptiles from the general limitation on regulating natural resources.

The staff had proposed the deletion of the last clause of Section 201 because it did not appear that the general limitation on regulating “natural resources” in Section 201 was intended to apply to the FGC’s specific and express authority to regulate birds, mammals, fish, amphibians, and reptiles in Section 200. Otherwise, the exception would swallow the rule.

However, the staff sees the Department’s point. If preserving the last clause of Section 201 would help to avoid confusion about the relationship between Sections 200 and 201, then it should probably be preserved. The easiest way to preserve the existing understanding of that relationship would be to leave Section 201 unchanged and delete the corresponding language from proposed Section 200(b)(2), thus:

200. (a) There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibians, and reptiles.

(b) No power is delegated to the commission by this section to regulate any of the following:

(1) The taking, possessing, processing, or use of fish, amphibians, kelp, or other aquatic plants for commercial purposes.

~~(2) Any natural resource or activity connected with a natural resource.~~

(3) ~~(2)~~ The taking or possession of a spike buck or spotted fawn. "Spotted fawn" means a deer one year of age or less that has spotted pelage. "Spike buck" means a male deer with unbranched antlers on both sides that are more than three inches in length.

(c) This section and any regulations adopted pursuant to this section have no effect on any provision of this code or any regulation adopted pursuant to this code that relates to a matter described in paragraph (1) of subdivision (b).

The staff recommends that change be made.

Conforming Revision

If the Commission makes the change recommended above, a conforming revision should also be made in proposed Section 250.

Proposed Section 250 includes a reference to the matters addressed in proposed Section 200(b). If the content of Section 201 is taken out of proposed Section 200(b) and preserved in its existing location (Section 201), that reference will need to be adjusted as follows:

250. (a) Except as provided in subdivision (b), this article applies to a commission regulation that governs the take or possession of any bird, mammal, fish, amphibian, or reptile.

(b) This article does not apply to a regulation ~~on a matter described in governed by~~ subdivision (b) of Section 200 ~~or Section 201~~.

(c) Except as expressly provided, this article does not supersede any other applicable law that governs the adoption, amendment, or repeal of a regulation.

Does the Commission approve this conforming revision?

Consolidation of Fish and Game Code Sections 203 and 205

Existing Sections 203 and 205 specify the types of regulations that the FGC is permitted to adopt pursuant to its grant of general authority, with regard to specified categories of animals:

203. Any regulation of the commission pursuant to this article relating to resident game birds, game mammals and fur-bearing

mammals may apply to all or any areas, districts, or portions thereof, at the discretion of the commission, and may do any or all of the following as to any or all species or subspecies:

(a) Establish, extend, shorten, or abolish open seasons and closed seasons.

(b) Establish, change, or abolish bag limits and possession limits.

(c) Establish and change areas or territorial limits for their taking.

(d) Prescribe the manner and the means of taking.

(e) Establish, change, or abolish restrictions based upon sex, maturity, or other physical distinctions.

205. Any regulation of the commission pursuant to this article which relates to fish, amphibia, and reptiles, may apply to all or any areas, districts, or portion thereof, at the discretion of the commission, and may do any or all of the following as to any or all species or subspecies:

(a) Establish, extend, shorten, or abolish open seasons and closed seasons.

(b) Establish, change, or abolish bag limits, possession limits, and size limits.

(c) Establish and change areas or territorial limits for their taking.

(d) Prescribe the manner and the means of taking.

In the tentative recommendation, proposed Section 280 would have combined and generalized those provisions, so that the FGC could address any of the specified matters when regulating any type of animal that it is authorized to regulate, thus:

280. A regulation governed by this article may apply to any or all areas, districts, or portions of areas or districts, at the discretion of the commission, and may do any or all of the following as to any or all species or subspecies:

(a) Establish, extend, shorten, or abolish open seasons and closed seasons.

(b) Establish, change, or abolish bag limits and possession limits.

(c) Establish and change areas or territorial limits for their taking.

(d) Prescribe the manner and the means of taking.

(e) Establish, change, or abolish restrictions based upon sex, maturity, or other physical distinctions.

The assumption was that this would be a minor and unproblematic simplification of the rules, erasing distinctions that would not make a difference in practice.

The Department opposes that change, indicating that it would create a substantive change to existing law that could expand the FGC's existing regulatory authority.⁷ For example, by authorizing certain types of regulations for *all* mammals (not just game mammals, as provided in existing Section 203), proposed Section 280 might be read to create new regulatory authority that the FGC does not currently possess. The Department believes that creating the possibility of that interpretation could cause problems.

Moreover, it is important to recall that the Commission's authority in this study expressly limits the scope for making substantive changes to existing law:

[The Commission may study whether] the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, *without making any significant substantive change to the effect of the law.*⁸

Under that limitation, the possibility that proposed Section 280 would make significant substantive changes to existing law is itself an argument against making the changes proposed in that section.

On balance, the minor simplification that proposed Section 280 would achieve is probably not sufficient justification to risk creating new problems (or making changes that would be more substantive than is proper for this study). **For those reasons, the staff recommends that Sections 203 and 205 be left unchanged (i.e., they would not be repealed and replaced with proposed Section 280).**

Conforming Revision

Existing Section 203.1 expands on the rules provided in Section 203, thus:

203.1. When adopting regulations pursuant to Section 203, the commission shall consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony.

7. Exhibit, p. 2.

8. 2014 Cal. Stat. res. ch. 63 (emphasis added).

The tentative recommendation proposed to generalize Section 203.1 so that it would apply to proposed Section 280 (which would include the content of Sections 203 *and* 205).

If Sections 203 and 205 are not replaced with proposed Section 280, then the changes to Section 203.1 would not be appropriate. If the Commission decides to leave Sections 203 and 205 unchanged, then Section 203.1 should also be left unchanged.

Does the Commission approve this conforming revision?

Treatment of Fish and Game Code Section 219

In specified circumstances, Section 219 authorizes FGC to adopt regulations that supersede statutes:

219. Any regulation adopted pursuant to this article may supersede any section of this code designated by number in the regulation, but shall do so only to the extent specifically provided in the regulation. A regulation which is adopted pursuant to this section shall be valid only to the extent that it makes additions, deletions, or changes to this code under one of the following circumstances:

(a) The regulation is necessary for the protection of fish, wildlife, and other natural resources under the jurisdiction of the commission.

(b) The commission determines that an emergency exists or will exist unless the action is taken. An emergency exists if there is an immediate threat to the public health, safety, and welfare, or to the population or habitat of any species.

A regulation which is adopted pursuant to this section shall be supported by written findings adopted by the commission at the time of the adoption of the regulation setting forth the basis for the regulation.

A regulation adopted pursuant to this section shall remain in effect for not more than 12 months from its effective date.

The draft recommendation does not propose any change to that provision. Instead, the tentative recommendation included the following note, which invited public comment:

Note. For the most part, this tentative recommendation proposes to generalize the rulemaking procedures that currently apply when the Fish and Game Commission regulates pursuant to the authority delegated by Section 200. The generalized procedures would apply to any regulation of take or possession of any bird, mammal, fish, amphibian, or reptile (with the exception of regulation of the matters excluded from Section 200).

This tentative recommendation does not propose to generalize Section 219 (which is set out above for reference purposes only). Section 219 purports to grant the Fish and Game Commission the extraordinary power to adopt regulations that supersede statutes. The Law Revision Commission has not yet reached any conclusion about the legal or policy merits of Section 219 and so is not prepared to recommend any amendment that would affect its scope of application.

The Law Revision Commission invites public comment on whether Section 219 should be generalized or otherwise reformed.

In response,⁹ the Department notes that Section 219 has been used sparingly in the past, and is intended to provide the Commission with flexibility to address emergency situations.

The Department also points out that the Legislature reviewed Section 219 in 1991 legislation.¹⁰ That bill added some procedural limitations to Section 219, but retained its main substantive effect. This suggests that the Legislature has no problem with the legal or policy implications of Section 219.

Given that history, the staff recommends against making any change to Section 219, either in the attached draft recommendation or in the larger recodification.

TECHNICAL CORRECTION

The draft recommendation proposes a conforming revision to Health and Safety Code Section 131052, in order to correct a cross-reference to a Fish and Game Code section that would be renumbered by the recommendation.

Section 131052 contains more than 200 other statutory cross-references. As it turns out, many of those references, which are unrelated to the Fish and Game Code, are defective in one way or another. Correcting those defects would require significant work in areas outside of the scope of this study.

The staff recommends against trying to fix all of the problems with that section in this study. Instead, it could be handled in one of the following ways:

- (1) Refer the matter to the Legislative Counsel, with details about the problems we've spotted. These could be addressed in a future "Maintenance of the Codes" bill.
- (2) Examine the erroneous references as part of a separate study. Under Government Code Section 8298, the Commission has authority to make minor changes of this type.

9. Exhibit p. 2.

10. See 1991 Cal. Stat. ch. 709 (AB 1361).

Under either approach, the draft recommendation would only address cross-references in Section 131052 to Fish and Game Code sections.¹¹

How would the Commission like to handle the unrelated reference errors in Health and Safety Code 131052?

APPROVAL OF RECOMMENDATION

Does the Commission approve the attached staff draft recommendation for publication and submission to the Legislature as a final recommendation, with or without changes?

Respectfully submitted,

Steve Cohen
Staff Counsel

11. In addition to correcting a reference to a provision affected by the draft recommendation, staff has added language to delete a cross-reference to Fish and Game Code Section 1507, which was repealed by its own terms, operative January 1, 2010. See 2004 Cal. Stat. ch. 553. The staff is satisfied that the substance of former Section 1507 was not continued in any other section.

#R-100

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

**Fish and Game Law: Technical Revisions and
Minor Substantive Improvements (Part 2)**

October 2015

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

The Law Revision Commission is preparing draft legislation to recodify the Fish and Game Code, in order to improve its organization and clarity, remove obsolete or redundant material, and correct technical errors. Because that work will involve the reorganization of the entire code, the recodification legislation will not be ready for presentation to the Legislature until the study is completed.

However, some beneficial changes can be made more quickly. As the larger study proceeds, the Law Revision Commission will make note of technical corrections and minor substantive improvements that can be made to the existing code, without waiting for completion of the entire study. Such improvements will be periodically compiled into recommendations for submission to the Legislature.

This recommendation is the second such proposal. It proposes a largely nonsubstantive modernization and reorganization of provisions of the Fish and Game Code relating to the regulatory authority of the Fish and Game Commission.

This recommendation was prepared pursuant to Resolution Chapter 63 of the Statutes of 2014.

FISH AND GAME LAW: TECHNICAL REVISIONS AND MINOR SUBSTANTIVE IMPROVEMENTS (PART 2)

1 BACKGROUND

2 In 2010, the Legislature directed the Natural Resources Agency to develop and
3 submit a “strategic vision” for the Fish and Game Commission and what is now
4 the Department of Fish and Wildlife.¹

5 Among other things, the Strategic Vision report recommended that the Law
6 Revision Commission review and recommend “clean-up” of the Fish and Game
7 Code, to “(1) resolve inconsistencies; (2) eliminate redundancies; (3) eliminate
8 unused and outdated code sections; (4) consolidate sections creating parallel
9 systems and processes; and (5) restructure codes to group similar statutes....”²

10 Based on a draft of the Strategic Vision report, Senator Fran Pavley and
11 Assembly Member Jared Huffman (then Chairs of the Senate Natural Resources
12 and Water Committee and the Assembly Water, Parks, and Wildlife Committee)
13 requested that the Law Revision Commission conduct a comprehensive review of
14 the Fish and Game Code, and recommend changes to the Legislature that would
15 “update, clarify, and improve” the code.³

16 Authority to conduct such a study was enacted by concurrent resolution in 2012:

17 [The] Legislature approves for study by the California Law Revision
18 Commission the new topic listed below:

19

20 Whether the Fish and Game Code and related statutory law should be revised to
21 improve its organization, clarify its meaning, resolve inconsistencies, eliminate
22 unnecessary or obsolete provisions, standardize terminology, clarify program
23 authority and funding sources, and make other minor improvements, without
24 making any significant substantive change to the effect of the law[.]⁴

25 Pursuant to that authority, the Law Revision Commission is analyzing the entire
26 Fish and Game Code for the purpose of preparing recodification legislation that
27 would improve the code’s organization and clarity, remove obsolete or redundant
28 material, and correct technical errors. Because that work will involve the
29 reorganization of the entire code, the recodification legislation will not be ready
30 for presentation to the Legislature until the study is completed.

1. 2010 Cal. Stat. ch. 424 (AB 2376 (Huffman)).

2. *California Fish & Wildlife Strategic Vision, Recommendations for Enhancing the State’s Fish and Wildlife Management Agencies* (April 2012), p. A13, Law Revision Commission Staff Memorandum 2012-41, Exhibit p. 45.

3. Law Revision Commission Staff Memorandum 2012-5, Exhibit pp. 32-33.

4. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).

1 However, some beneficial changes can be made more quickly. As the larger
2 study proceeds, the Law Revision Commission has made note of minor
3 substantive improvements that can be made to the existing code without waiting
4 for completion of the entire study. Such improvements will be periodically
5 compiled into recommendations for submission to the Legislature.

6 The Law Revision Commission's first such recommendation⁵ has been
7 submitted to the Legislature, and a bill that would implement the recommendation
8 is presently pending.⁶ This recommendation is the Law Revision Commission's
9 second such proposal.

10 The revisions proposed in the recommendation are summarized below.⁷

11 REGULATION OF TAKE AND POSSESSION

12 One of the central functions of the Fish and Game Commission (hereafter,
13 "Commission") is to adopt regulations governing the take and possession of wild
14 animals. General authority to adopt such regulations is granted in Fish and Game
15 Code Section 200, subject to certain express limitations.⁸

16 The article that contains Section 200 (hereafter, "Article 1") also contains a
17 number of provisions that prescribe procedures for Commission rulemaking.⁹

18 Article 1 and most of the sections within it were enacted in 1957, as part of the
19 last recodification of the Fish and Game Code.¹⁰ Since that time, there have been
20 significant changes in the law, which Article 1 has not been revised to properly
21 reflect. Those changes include:

- 22 (1) The enactment of new provisions that authorize Commission regulation of
23 take or possession in specific circumstances.
- 24 (2) Abandonment of the original procedure prescribed in Article 1 for
25 Commission rulemaking.

5. *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*, 45 Cal. L. Revision Comm'n Reports 1 (2015).

6. See AB 1527 (Committee on Water, Parks, and Wildlife).

7. Some of the provisions in the proposed legislation could be affected by pending legislation. See, e.g., AB 665 (Frazier), SB 798 (Committee on Natural Resources and Water).

8. See Fish & Game Code §§ 200 (commercial fishing), 201 (natural resources), 204(d) (spike bucks and spotted fawns).

9. See Fish & Game Code §§ 202 (exemptions from time periods in Administrative Procedure Act provisions), 206, 207, and 220(b) (meeting procedure), 210 and 211 (distribution of regulations), 215 (effective date of regulations), 218 (judicial review), 219 (effect on other code sections) 220(a) (effective time period of regulation).

10. 1957 Cal. Stat. ch. 456.

1 (3) Enactment of the modern Administrative Procedure Act (“APA”),¹¹ which
2 provides a uniform and comprehensive procedure for state agency
3 rulemaking.

4 This recommendation proposes to modernize Article 1 and related law, by
5 conforming procedural rules to current practices, and by eliminating obsolete
6 language and distinctions.

7 **Generalized Application of Rulemaking Procedure**

8 When Article 1 was first enacted in 1957, Section 200 provided nearly all of the
9 authority for Commission regulation of take and possession. In accord with that
10 fact, the procedural rules in Article 1 were largely drafted to apply to rulemaking
11 “pursuant to this article” — i.e., pursuant to the article that contained Section 200.
12 Consequently, the rulemaking procedures in Article 1 applied to every regulation
13 adopted by the Commission under its general authority to regulate take and
14 possession.

15 Since 1957, the Legislature has enacted a number of new code sections that
16 authorize the Commission to regulate the take or possession of specific animals, or
17 in specified circumstances. Those provisions have been located in the Fish and
18 Game Code near the subjects to which they relate, and not in Article 1. For
19 example, in 1986 the Legislature enacted Fish and Game Code Section 4902,
20 authorizing the Commission to regulate Nelson Bighorn Sheep.¹² That provision is
21 located in the Fish and Game Code among other provisions governing specific
22 mammals, rather than in Article 1.

23 This placement of new rulemaking authority outside of Article 1 creates
24 potential for confusion.

25 By their terms, the procedural provisions of Article 1 apply to rulemaking
26 “pursuant to this article,” i.e., pursuant to the general authority conferred by
27 Section 200. So, when the Commission regulates Nelson Bighorn Sheep pursuant
28 to Section 4902, is it subject to the procedural provisions in Article 1? A literal
29 reading of the Article 1 provisions would suggest that it is not.

30 But Nelson Bighorn Sheep are mammals. As such, one could also argue that a
31 regulation of Nelson Bighorn Sheep is concurrently authorized by Section 200. In
32 that case, the regulation would be subject to the procedures in Article 1.

33 The Law Revision Commission sees no policy reason to distinguish between the
34 regulation of wild animals generally, and the regulation of those same animals
35 specifically, with regard to the rulemaking procedures provided in Article 1. To

11. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As a state agency, the Fish and Game Commission is required to comply with all applicable procedural provisions of the APA when promulgating regulations, unless expressly exempted by legislation enacted after 1947. Gov’t Code § 11346; see also *Voss v. Superior Court*, 46 Cal. App. 4th 900, 909, 54 Cal. Rptr. 2d 225 (1996). However, the APA specifies only a “floor” of regulatory procedure, and agencies may be subjected to additional regulatory responsibilities as the Legislature provides.

12. See, e.g., Fish & Game Code § 4902(a).

1 the contrary, it seems likely that the Legislature intended for the procedures in
2 Article 1 to apply to nearly every Commission regulation of take or possession (as
3 was the case when those procedural provisions were enacted). The later decisions
4 to locate more specific grants of regulatory authority (like Section 4902) according
5 to subject matter were likely driven only by organizational concerns, rather than
6 an intention to exclude those grants of authority from general rulemaking
7 procedures.

8 The proposed legislation would therefore generalize the rulemaking procedures
9 in Article 1 so that they would apply to all Commission regulations governing take
10 or possession of wild animals, with one exception.¹³ The procedures would not
11 apply to matters that are expressly excluded from the general rulemaking authority
12 provided in Section 200.¹⁴ Those exclusions were enacted together with the
13 rulemaking procedures, creating a strong inference that the Legislature intended to
14 exclude those matters from the procedures that governed rulemaking under
15 Section 200. Out of caution, the proposed legislation would not disturb that
16 inference.

17 **Modernization of Procedure for Conducting Rulemaking at Public Meetings**

18 As originally enacted, Article 1 required the Commission to conduct its
19 rulemaking according to a fixed calendar. At its January and February meetings, it
20 was to adopt regulations governing fish, amphibians, and reptiles; at its April and
21 May meetings, it was to adopt regulations governing birds and mammals.¹⁵

22 Over time, that calendaring approach was abandoned and replaced with a more
23 relaxed requirement that the Commission adopt regulations at a series of no fewer
24 than three public meetings.¹⁶ However, the procedure specified for the conduct of
25 those meetings is fairly loose, and is not well-coordinated with existing
26 requirements of the APA.

27 The proposed legislation would revise the existing meeting provision in Article
28 1 to make it fully consistent with the Commission's current practice and the
29 requirements of the APA.¹⁷

30 The proposed legislation would also repeal Fish and Game Code Section 220(b).
31 That provision gave the Commission flexibility to deviate from the former
32 statutory rulemaking calendar based on new information presented in the interval
33 between scheduled rulemaking meetings. With the abandonment of the calendared
34 meetings, that flexibility is no longer required.

13. See proposed Fish & Game Code § 250 *infra*.

14. See *supra* note 8.

15. See 1957 Cal. Stat. ch. 456, §§ 206-213.

16. See Fish & Game Code § 207.

17. See proposed Fish & Game Code § 255 *infra*. See also Gov't Code §§ 11346.2, 11346.4, 11346.5, 11346.8, 11346.9.

1 **Continuity of Regulations Adopted Pursuant to Section 200**

2 When Article 1 was first enacted, it included Section 221. Section 221 was a
3 “sunset provision,” providing for the repeal of Article 1, by operation of law, on a
4 specified date.¹⁸

5 Section 250 was added to account for that possible repeal.¹⁹ Section 250
6 provides that in the event of a repeal of Article 1, any existing regulation that had
7 been adopted pursuant to that article would remain in effect after the repeal.

8 In the years following the enactment of Article 1, Section 221 was repeatedly
9 amended to extend its sunset date.²⁰ In 2001, Section 221 was finally repealed.²¹
10 As a result, the Commission’s general rulemaking authority under Article 1 is no
11 longer subject to a sunset provision, and there is no need for the special continuity
12 rule provided in Section 250.

13 The proposed legislation would therefore repeal Section 250.

14 **Other Obsolete or Misplaced Provisions**

15 The proposed legislation would also repeal or amend other Fish and Game Code
16 provisions, to remove obsolete language and distinctions.²² Other provisions
17 would be relocated, to better reflect their function.²³

18 **Conforming Revisions**

19 The proposed legislation would also make conforming revisions as necessary to
20 accommodate the changes described above.²⁴

18. See 1957 Cal. Stat. ch. 456, § 221.

19. See 1957 Cal. Stat. ch. 456, § 250.

20. See 1957 Cal. Stat. ch. 1549; 1959 Cal. Stat. ch. 1568; 1961 Cal. Stat. ch. 1245; 1963 Cal. Stat. ch. 7 (1st Ex. Sess.); 1965 Cal. Stat. ch. 748; 1969 Cal. Stat. ch. 110; 1973 Cal. Stat. ch. 723; 1975 Cal. Stat. ch. 1083; 1979 Cal. Stat. ch. 1076; 1984 Cal. Stat. ch. 229; 1989 Cal. Stat. ch. 564; 1994 Cal. Stat. ch. 935; 1999 Cal. Stat. ch. 483.

21. See 2001 Cal. Stat. ch. 398.

22. See proposed repeal of Fish & Game Code §§ 215, 218, and 300 *infra*.

23. Fish and Game Code Section 206 would be relocated with other Fish and Game Commission organizational provisions, as Section 110. Fish and Game Code Sections 205.1, 217.5, and 217.6 would be relocated to a new article among other general sport fishing provisions. See proposed Fish & Game Code §§ 7110 and 7115 *infra*.

24. See proposed revisions to Fish & Game Code §§ 460 and 7120, Gov’t Code § 11343.4, and Health & Safety Code § 131052 *infra*.

PROPOSED LEGISLATION

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PROPOSED LEGISLATION

FISH AND GAME CODE

Heading of Chapter 2 (commencing with Section 200) (amended)

SEC. _____. The heading of Chapter 2 of Division 1 of the Fish and Game Code is amended to read:

CHAPTER 2. ~~GENERAL REGULATORY POWERS~~ REGULATION
OF TAKE AND POSSESSION GENERALLY

Heading of Article 1 (commencing with Section 200) (amended)

SEC. _____. The heading of Article 1 of Chapter 2 of Division 1 of the Fish and Game Code is amended to read:

Article 1. ~~Regulations~~ Authority

Fish & Game Code § 200 (amended). General authority

SEC. _____. Section 200 of the Fish and Game Code is amended to read:

200. (a) There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, ~~amphibia~~ amphibians, and reptiles ~~to the extent and in the manner prescribed in this article.~~

(b) No power is delegated to the commission by this ~~article~~ section to regulate ~~the~~ any of the following:

(1) ~~The taking, possessing, processing, or use of fish, amphibia amphibians, kelp, or other aquatic plants for commercial purposes, and no provision of this code relating or applying thereto, nor any regulation of the commission made pursuant to such provision, shall be affected by this article or any regulation made under this article.~~

(2) The taking or possession of a spike buck or spotted fawn. “Spotted fawn” means a deer one year of age or less that has spotted pelage. “Spike buck” means a male deer with unbranched antlers on both sides that are more than three inches in length.

(c) This section and any regulations adopted pursuant to this section have no effect on any provision of this code or any regulation adopted pursuant to this code that relates to a matter described in paragraph (1) of subdivision (b).

Comment. Section 200 is amended to delete a reference to the “extent and manner” of regulations. Rules formerly located in this article have been repealed or relocated. See Sections 250-285 (procedure).

The section is also amended to add subdivision and paragraph designations, and make other nonsubstantive changes.

Subdivision (a) restates the first paragraph of Section 200.

1 Subdivision (b)(1) continues the first part of the second paragraph of Section 200 without
2 substantive change.

3 Subdivision (b)(2) continues former Section 204(d) without substantive change.

4 Subdivision (c) restates the second part of the second paragraph of Section 200 without
5 substantive change.

6 **Fish & Game Code §§ 250-285 (added). Special rulemaking procedures**

7 SEC. _____. Article 2 of Chapter 2 of Division 1 is added to the Fish and Game
8 Code, to read:

9 Article 2. Procedure

10 **§ 250. Application of article**

11 250. (a) Except as provided in subdivision (b), this article applies to a
12 commission regulation that governs the take or possession of any bird, mammal,
13 fish, amphibian, or reptile.

14 (b) This article does not apply to a regulation governed by subdivision (b) of
15 Section 200 or Section 201.

16 (c) Except as expressly provided, this article does not supersede any other
17 applicable law that governs the adoption, amendment, or repeal of a regulation.

18 **Comment.** Section 250 is new. It makes clear that this article applies to any Fish and Game
19 Commission regulation that governs the take or possession of any bird, mammal, fish, amphibian,
20 or reptile, except for a regulation that falls within the scope of Section 200(b). For example,
21 rulemaking under Section 331 (take of antelope) is governed by this article, because it governs
22 the take of a mammal and is not described by Section 200(b). By contrast, rulemaking under
23 Section 8213 (sale of salmon) is not governed by this article, because regulation of the
24 commercial take of fish is described by Section 200(b).

25 Subdivision (c) makes clear that, except as expressly indicated (see, e.g., Section 265), the
26 rules in this article do not displace any other law that governs commission rulemaking. Other law
27 may impose additional requirements, either in specific circumstances or generally. See, e.g.,
28 Sections 307 (animal scarcity), 325-327 (animal surplus); Gov't Code § 11340 *et seq.* (general
29 state agency rulemaking procedure).

30 **§ 255. General rulemaking procedure**

31 255. (a) When adopting, amending, or repealing a regulation governed by this
32 article, the commission shall conduct the following steps at separate public
33 meetings:

34 (1) Approve the submission of a notice of proposed action to the Office of
35 Administrative Law.

36 (2) Consider public comment on the proposed action. The department shall
37 participate in this process by reviewing and responding to all public comment.

38 (3) Make a final decision on the proposed action.

39 (b) The meetings required by this section may be regular or special meetings.

40 (c) The meetings required by this section shall be duly noticed to the public in
41 accordance with subdivision (c) of Section 110 and the Administrative Procedure

1 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
2 Title 2 of the Government Code).

3 (d) Within 45 days after the Commission makes a final decision to adopt,
4 amend, or repeal a regulation governed by this article, the department shall publish
5 and distribute the regulation to each county clerk, each district attorney, and each
6 judge of the superior court in the state.

7 **Comment.** Subdivisions (a) through (c) of Section 255 restate and generalize the provisions of
8 former Section 207(a)-(d) to conform to the rulemaking procedures of the Administrative
9 Procedure Act. See Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code. Language requiring the Commission to “receive recommendations for
11 regulations” is obsolete and has not been continued. See Gov’t Code § 11340.6 (public
12 submission of rulemaking proposals).

13 Subdivision (d) combines and generalizes former Section 207(e) and 210(a).

14 **§ 260. Distribution of regulations**

15 260. (a) The commission and the department may do anything that is deemed
16 necessary and proper to publicize and distribute a regulation governed by this
17 article so that persons likely to be affected will be informed of them. The failure of
18 the commission to provide any notice of a regulation governed by this article,
19 beyond what is required by Chapter 3.5 (commencing with Section 11340) of Part
20 1 of Division 3 of Title 2 of the Government Code, shall not impair the validity of
21 the regulations.

22 (b) Notwithstanding any other provision of law, the commission and the
23 department may contract with private entities to print regulations governed by this
24 article, and other public information. The printing contract shall include criteria to
25 ensure that the public information provided in the publication is easy to reference,
26 read, and understand.

27 (c) Printing contracts authorized by this section for which no state funds are
28 expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2
29 of Division 2 of the Public Contract Code, except for Article 2 (commencing with
30 Section 10295) of Chapter 2.

31 (d) Material printed pursuant to subdivision (b) that contains advertisements
32 shall meet all specifications prescribed by the department. The printed material
33 shall not contain advertisements for tobacco products, alcohol, firearms and
34 devices prohibited pursuant to Section 32625 of the Penal Code, Article 2
35 (commencing with Section 30600) of Chapter 2 of Division 10 of Title 4 of Part 6
36 of the Penal Code, or any provision listed in Section 16590 of the Penal Code, or
37 firearms not authorized by the commission as a legal method of sport-hunting,
38 political statements, solicitations for membership in organizations, or any other
39 statement, solicitation, or product advertisement that is in conflict with the
40 purposes for which the material is produced, as determined by the commission.

41 (e) Neither the department nor the commission shall contract with private
42 entities to print the materials described in subdivision (b) if the letting of those
43 contracts will result in the elimination of civil service positions.

1 (f) The department or the license agent may give a copy of the current applicable
2 published regulations governed by this article to each person issued a license, at
3 the time the license is issued.

4 **Comment.** Section 260 restates former Sections 210(b)-(d) and 211.

5 **§ 265. Exemption from time requirements**

6 265. A regulation governed by this article is not subject to the time periods for
7 the adoption, amendment, or repeal of a regulation prescribed in Sections 11343.4,
8 11346.4, 11346.8, and 11347.1 of the Government Code.

9 **Comment.** Section 265 generalizes the second sentence of former Section 202.

10 **§ 270. Effective date of regulation**

11 270. The adoption, amendment, or repeal of a regulation governed by this article
12 shall become effective at the time specified in the regulation, but not sooner than
13 the date of the filing.

14 **Comment.** Section 270 generalizes a part of former Section 215 (effective date of regulation).

15 **§ 275. Effective period**

16 275. A regulation governed by this article shall remain in effect for the period
17 specified in the regulation or until superseded by subsequent regulation of the
18 commission or by statute.

19 **Comment.** Section 275 generalizes former Section 220(a).

20 **CONFORMING REVISIONS**

21 **Fish & Game Code § 110 (added). Meetings**

22 SEC. _____. Section 110 is added to the Fish and Game Code, to read:

23 110. (a) The commission shall hold no fewer than eight regular meetings per
24 calendar year, if the commission has adequate funding for related travel, including
25 funding for department travel. The commission may also hold special meetings or
26 hearings to receive additional input from the department and the public.

27 (b) The commission shall announce the dates and locations of meetings for the
28 year by January 1 of that year, or 60 days prior to the first meeting, whichever
29 comes first. Meeting locations shall be accessible to the public and located
30 throughout the state. To the extent feasible, meetings shall be held in state
31 facilities. In setting the dates and locations for regular meetings, the commission
32 shall also consider the following factors:

33 (1) Recommendations of the department.

34 (2) Opening and closing dates of fishing and hunting seasons.

1 (3) The schedules of other state and federal regulatory agencies whose
2 regulations affect the management of fish and wildlife of this state.

3 (c) The commission shall cause the notice of the schedule for regular meetings,
4 and notice of any change in the date and location of a meeting, to be disseminated
5 to the public in a manner that will result in broad dissemination and that complies
6 with the Administrative Procedure Act (Chapter 3.5 (commencing with Section
7 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

8 **Comment.** Section 110 continues former Section 206 without change.

9 **Fish & Game Code § 202 (repealed). Procedure**

10 SEC. _____. Section 202 of the Fish and Game Code is repealed.

11 ~~202. The commission shall exercise its powers under this article by regulations~~
12 ~~made and promulgated pursuant to this article. Regulations adopted pursuant to~~
13 ~~this article shall not be subject to the time periods for the adoption, amendment, or~~
14 ~~repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8, and~~
15 ~~11347.1 of the Government Code.~~

16 **Comment.** The second sentence of former Section 202 is continued by Section 265.

17 **Fish & Game Code § 204 (amended). Limitation of authority**

18 SEC. _____. Section 204 of the Fish and Game Code is repealed.

19 ~~204. The commission has no power under this article to make any regulation~~
20 ~~authorizing or permitting the taking of:~~

21 ~~(a) Any bird or mammal in any refuge heretofore or hereafter established by~~
22 ~~statute, the taking or possession of which shall be regulated pursuant to Sections~~
23 ~~10500 to 10506, inclusive.~~

24 ~~(b) Elk, the taking or possession of which shall be regulated pursuant to Section~~
25 ~~332.~~

26 ~~(c) Antelope, the taking or possession of which shall be regulated pursuant to~~
27 ~~Section 331.~~

28 ~~(d) Any a spike buck or spotted fawn. “Spotted fawn” means a young deer born~~
29 ~~that year which has spotted pelage. “Spike buck” means a male deer with~~
30 ~~unbranched antlers on both sides which are more than three inches in length.~~

31 ~~Any regulation establishing a season to compensate for closure of an area due to~~
32 ~~extreme fire hazard shall be made pursuant to Section 306.~~

33 ~~Any regulation setting a special hunting season for mammals, except deer, or~~
34 ~~game birds which have increased in number to such an extent that a surplus exists~~
35 ~~or which are damaging property or are overgrazing their range shall be made~~
36 ~~pursuant to Section 325.~~

37 **Comment.** Former Section 204(d) is continued by Section 200(b)(3). The remainder of former
38 Section 204 is superfluous and is not continued. See Sections 306, 325, 331, 332, and 10500 to
39 10506.

1 **Fish & Game Code § 205.1 (repealed). Automatic process to conform sport fishing**
2 **regulations**

3 SEC. _____. Section 205.1 of the Fish and Game Code is repealed.

4 ~~205.1. (a) The commission may establish by regulation an automatic process to~~
5 ~~conform its sport fishing regulations to federal regulations.~~

6 ~~(b) The department shall provide public notice of any conforming action~~
7 ~~implemented pursuant to this section.~~

8 **Comment.** Former Section 205.1 is continued by Section 7110.

9 **Fish & Game Code § 206 (repealed). Meetings**

10 SEC. _____. Section 206 of the Fish and Game Code is repealed.

11 ~~206. (a) The commission shall hold no fewer than eight regular meetings per~~
12 ~~calendar year, if the commission has adequate funding for related travel, including~~
13 ~~funding for department travel. The commission may also hold special meetings or~~
14 ~~hearings to receive additional input from the department and the public.~~

15 ~~(b) The commission shall announce the dates and locations of meetings for the~~
16 ~~year by January 1 of that year, or 60 days prior to the first meeting, whichever~~
17 ~~comes first. Meeting locations shall be accessible to the public and located~~
18 ~~throughout the state. To the extent feasible, meetings shall be held in state~~
19 ~~facilities. In setting the dates and locations for regular meetings, the commission~~
20 ~~shall also consider the following factors:~~

21 ~~(1) Recommendations of the department.~~

22 ~~(2) Opening and closing dates of fishing and hunting seasons.~~

23 ~~(3) The schedules of other state and federal regulatory agencies whose~~
24 ~~regulations affect the management of fish and wildlife of this state.~~

25 ~~(c) The commission shall cause the notice of the schedule for regular meetings,~~
26 ~~and notice of any change in the date and location of a meeting, to be disseminated~~
27 ~~to the public in a manner that will result in broad dissemination and that complies~~
28 ~~with the Administrative Procedure Act (Chapter 3.5 (commencing with Section~~
29 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

30 **Comment.** Former Section 206 is continued without change by Section 110.

31 **Fish & Game Code § 207 (repealed). General rulemaking procedure**

32 SEC. _____. Section 207 of the Fish and Game Code is repealed.

33 ~~207. (a) Except for emergency regulations, the commission shall consider and~~
34 ~~adopt regulations pursuant to Sections 203 and 205 at a series of no fewer than~~
35 ~~three meetings. These meetings may be regular or special meetings that are duly~~
36 ~~noticed to the public in accordance with subdivision (c) of Section 206 and the~~
37 ~~Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of~~
38 ~~Part 1 of Division 3 of Title 2 of the Government Code).~~

39 ~~(b) At the first meeting, the commission shall receive recommendations for~~
40 ~~regulations from its own members and staff, the department, other public agencies,~~
41 ~~and the public.~~

1 ~~(c) At the second meeting, the commission shall devote time for open public~~
2 ~~discussion of proposed regulations presented at the first meeting. The department~~
3 ~~shall participate in this discussion by reviewing and presenting its findings~~
4 ~~regarding each regulation proposed by the public and by responding to objections~~
5 ~~raised pertaining to its proposed regulations. After considering the public~~
6 ~~discussion, the commission shall announce, prior to adjournment of the meeting,~~
7 ~~the regulations it intends to add, amend, or repeal.~~

8 ~~(d) At the third meeting, the commission may choose to hear additional public~~
9 ~~discussion regarding the regulations it intends to adopt. At the meeting, the~~
10 ~~commission shall add, amend, or repeal regulations relating to any~~
11 ~~recommendation received at the initial meeting it deems necessary to preserve,~~
12 ~~properly utilize, and maintain each species or subspecies.~~

13 ~~(e) Within 45 days after adoption, the department shall publish and distribute~~
14 ~~regulations adopted pursuant to this section.~~

15 **Comment.** Former Section 207 is generally restated in Section 255.

16 **Fish & Game Code § 210 (repealed). Distribution of regulations**

17 SEC. ____ . Section 210 of the Fish and Game Code is repealed.

18 ~~210. (a) The commission shall provide copies of the regulations added,~~
19 ~~amended, or repealed pursuant to subdivision (e) of Section 207 to each county~~
20 ~~clerk, each district attorney, and each judge of the superior court in the state.~~

21 ~~(b) The commission and the department may do anything that is deemed~~
22 ~~necessary and proper to publicize and distribute regulations so that persons likely~~
23 ~~to be affected will be informed of them. The failure of the commission to provide~~
24 ~~any notice of its regulations, other than by filing them in accordance with Section~~
25 ~~215, shall not impair the validity of the regulations.~~

26 ~~(c) The department or the license agent may give a copy of the current~~
27 ~~applicable published regulations to each person issued a license at the time the~~
28 ~~license is issued.~~

29 ~~(d) Notwithstanding any other provision of law, the commission and the~~
30 ~~department may contract with private entities to print regulations and other~~
31 ~~regulatory and public information. Printing contracts authorized by this~~
32 ~~subdivision and for which no state funds are expended are not subject to Chapter 2~~
33 ~~(commencing with Section 10290) of Part 2 of Division 2 of the Public Contract~~
34 ~~Code, except for Article 2 (commencing with Section 10295) of Chapter 2.~~

35 **Comment.** Former Section 210(a) is continued by Section 255(d).

36 Former Section 210(b)-(d) is continued by Section 260.

37 **Fish & Game Code § 211 (repealed). Printing of regulations**

38 SEC. ____ . Section 211 of the Fish and Game Code is repealed.

39 ~~211. (a) Material printed pursuant to subdivision (d) of Section 210 that contains~~
40 ~~advertisements shall meet all specifications prescribed by the department. The~~
41 ~~printed material shall not contain advertisements for tobacco products, alcohol,~~

1 ~~firearms and devices prohibited pursuant to Section 32625 of the Penal Code,~~
2 ~~Article 2 (commencing with Section 30600) of Chapter 2 of Division 10 of Title 4~~
3 ~~of Part 6 of the Penal Code, or any provision listed in Section 16590 of the Penal~~
4 ~~Code, or firearms not authorized by the commission as a legal method of sport-~~
5 ~~hunting, political statements, solicitations for membership in organizations, or any~~
6 ~~other statement, solicitation, or product advertisement that is in conflict with the~~
7 ~~purposes for which the material is produced, as determined by the commission.~~
8 ~~The printing contract shall include criteria to ensure that the public information~~
9 ~~provided in the publication is easy to reference, read, and understand.~~

10 ~~(b) Neither the department nor the commission shall contract with private~~
11 ~~entities to print the materials described in subdivision (d) of Section 210 if the~~
12 ~~letting of those contracts will result in the elimination of civil service positions.~~

13 **Comment.** Former Section 211 is continued by Section 260.

14 **Fish & Game Code § 215 (repealed). Filing of regulations**

15 SEC. ____. Section 215 of the Fish and Game Code is repealed.

16 ~~215. Every regulation of the commission made pursuant to this article shall be~~
17 ~~filed with the Secretary of State, and shall become effective at the time specified~~
18 ~~therein, but not sooner than the date of the filing.~~

19 **Comment.** The second clause of former Section 215 (effective date of regulation) is continued
20 by Section 270.

21 The first clause of former Section 215 (required filing of regulation with Secretary of State) is
22 superfluous and not continued. See Gov't Code § 11343.

23 **Fish & Game Code § 217.5 (repealed). Persons with disabilities**

24 SEC. ____. Section 215 of the Fish and Game Code is repealed.

25 ~~217.5. (a) The department shall identify property it owns or manages that~~
26 ~~includes areas for sport fishing which are accessible to disabled persons.~~

27 ~~(b) Commencing with the booklet of sport fishing regulations published by the~~
28 ~~commission in 1986, the availability of sport fishing areas, identified by the~~
29 ~~department as accessible to disabled persons under subdivision (a), shall be noted~~
30 ~~in the booklet of regulations, together with telephone numbers and instructions for~~
31 ~~obtaining a list of those areas from regional department offices.~~

32 **Comment.** Former Section 217.5 is continued by Section 7115(a)-(b).

33 **Fish & Game Code § 217.6 (repealed). Human health advisories**

34 SEC. ____. Section 215 of the Fish and Game Code is repealed.

35 ~~217.6. Commencing with the booklet of sportfishing regulations published in~~
36 ~~1987, the booklet shall also contain any human health advisories relating to fish~~
37 ~~which are formally issued by the State Department of Health Services or~~
38 ~~summaries of those human health advisories. The summaries shall be prepared in~~
39 ~~consultation with the State Department of Health Services.~~

40 **Comment.** Former Section 217.6 is continued by Section 7115(c).

1 **Fish & Game Code § 218 (repealed). Judicial review**

2 ~~218. Any regulation of the commission made pursuant to this article shall be~~
3 ~~subject to review in accordance with law by any court of competent jurisdiction.~~

4 **Comment.** Former Section 218 is obsolete and is not continued. See Gov't Code § 11350.

5 **Fish & Game Code § 220 (repealed). Special rules**

6 SEC. _____. Section 220 of the Fish and Game Code is repealed.

7 ~~220. (a) Any regulation of the commission added or amended pursuant to this~~
8 ~~article shall remain in effect for the period specified therein or until superseded by~~
9 ~~subsequent regulation of the commission or by statute.~~

10 ~~(b) Notwithstanding this article, the commission may add, amend, or repeal~~
11 ~~regulations at any regular or special meeting if facts are presented to the~~
12 ~~commission which were not presented at the time the original regulations were~~
13 ~~adopted and if the commission determines that those regulations added, amended,~~
14 ~~or repealed are necessary to provide proper utilization, protection, or conservation~~
15 ~~of fish and wildlife species or subspecies.~~

16 **Comment.** Former Section 220(a) is continued without substantive change by Section 275.
17 Former Section 220(b) is obsolete and is not continued.

18 **Fish & Game Code § 240 (repealed). Emergency regulations**

19 SEC. _____. Article 1.5 of Chapter 2 of Division 1 of the Fish and Game Code is
20 repealed.

21 **Comment.** Former Section 240 is continued by Section 399.

22 **Fish & Game Code § 250 (repealed). Continuance of regulations**

23 SEC. _____. Article 2 of Chapter 2 of Division 1 of the Fish and Game Code is
24 repealed.

25 **Comment.** Former Section 250 is repealed as obsolete. Section 250 was originally enacted
26 when the Fish and Game Commission's authority to regulate the take and possession of wildlife
27 was subject to a series of sunset provisions set forth in Section 221. See 1957 Cal. Stat. ch. 1549;
28 1959 Cal. Stat. ch. 1568; 1961 Cal. Stat. ch. 1245; 1963 Cal. Stat. ch. 7 (1st Ex. Sess.); 1965 Cal.
29 Stat. ch. 748; 1969 Cal. Stat. ch. 110; 1973 Cal. Stat. ch. 723; 1975 Cal. Stat. ch. 1083; 1979 Cal.
30 Stat. ch. 1076; 1984 Cal. Stat. ch. 229; 1989 Cal. Stat. ch. 564; 1994 Cal. Stat. ch. 935; 1999 Cal.
31 Stat. ch. 483.

32 The purpose of Section 250 was to provide for the continuity of adopted regulations in the
33 event that the Fish and Game Commission's rulemaking authority were to be repealed by
34 operation of law. That possibility is no longer a concern, as Section 221 was itself repealed in
35 2001. See 2001 Cal. Stat. ch. 398.

36 **Fish & Game Code § 300 (repealed). Filing with Secretary of State**

37 SEC. _____. Section 300 of the Fish and Game Code is repealed.

38 ~~300. A regulation adopted pursuant to this code shall be filed with the Secretary~~
39 ~~of State, as required by Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
40 ~~Division 3 of Title 2 of the Government Code.~~

41 **Comment.** Former Section 300 is superfluous and is not continued. See Gov't Code § 11343.

1 **Fish & Game Code § 399 (added). Emergency regulations**

2 SEC. _____. Chapter 3.5 is added to Division 1 of the Fish and Game Code, to
3 read:

4 CHAPTER 3.5. EMERGENCY REGULATIONS

5 **§ 399. Emergency regulations**

6 399. Notwithstanding any other provision of this code, the commission, when
7 adopting, amending, or repealing a regulation pursuant to authority vested in it by
8 this code, may, after at least one hearing, adopt, amend, or repeal that regulation
9 pursuant to Section 11346.1 of the Government Code, if it makes either of the
10 following findings:

11 (a) That the adoption, amendment, or repeal is necessary for the immediate
12 conservation, preservation, or protection of birds, mammals, fish, amphibians, or
13 reptiles, including, but not limited to, their nests or eggs.

14 (b) That the adoption, amendment, or repeal is necessary for the immediate
15 preservation of the public peace, health and safety, or general welfare.

16 **Comment.** Section 399 restates former Section 240(a) without substantive change, except to
17 add a reference to amphibians.

18 Former Section 240(b) is redundant and is not continued. See Gov't Code Sections
19 11346.1(a)(1) & 11349.6 (review of proposed emergency regulation).

20 **Fish & Game Code § 460 (amended). Recommendations relating to deer**

21 SEC. _____. Section 460 of the Fish and Game Code is amended to read:

22 460. Prior to ~~the February~~ each meeting of the commission ~~as required in~~ at
23 which the commission considers the regulation of deer and takes action pursuant
24 to paragraph (1) of subdivision (a) of Section 207 255, the department shall
25 recommend to the commission those deer herd units to be placed under a general
26 deer hunting season. At the same time, the department shall recommend to the
27 commission, subject to the provisions of Sections 458 and 459, whether any
28 antlerless deer should be taken and in what deer herd units antlerless deer are to be
29 taken. If in the judgment of the department there are deer herd units in which
30 hunting pressure would adversely affect the deer herd, impair the hunting
31 experience, or endanger the public safety, the department shall also recommend to
32 the commission those deer herd units where hunter numbers should be restricted
33 and which should be removed from the general deer hunting season designation.
34 The department shall inform the commission of the condition of each deer herd
35 unit. Upon receipt of the recommendations and information required in this
36 section, the commission shall make that material known to the public and its
37 determinations regarding proposed regulations. The recommendations of the
38 department shall, in accordance with the provisions of Sections 458 and 459,
39 include the number, if any, of antlerless deer that should be taken in deer herd
40 units, whether the permits should be either-sex permits, the proposed dates for the

1 taking, and the number of permits proposed for each deer herd unit. At the same
2 time, the department shall recommend the establishment of any hunter-restricted
3 quota units, if needed, and the number of the quota and manner in which the quota
4 permits should be issued.

5 **Comment.** Section 460 is amended to correct an obsolete cross-reference.

6 **Fish & Game Code §§ 7110-7115 (added). Sport fishing regulations**

7 SEC. _____. Article 1.5 is added to Chapter 1 of Part 2 of Division 6 of the Fish
8 and Game Code, to read:

9 Article 1.5. Sport Fishing Regulations

10 **§ 7110. Automatic process to conform sport fishing regulations**

11 7110. (a) The commission may establish by regulation an automatic process to
12 conform its sport fishing regulations to federal regulations.

13 (b) The department shall provide public notice of any conforming action
14 implemented pursuant to this section.

15 **Comment.** Section 7110 continues former Section 205.1 without change.

16 **§ 7115. Required information in regulation booklet**

17 7115. (a) The department shall identify property it owns or manages that
18 includes areas for sport fishing accessible to persons with disabilities.

19 (b) Commencing with the booklet of sport fishing regulations published by the
20 commission in 1986, the availability of sport fishing areas, identified by the
21 department as accessible to persons with disabilities under subdivision (a), shall be
22 noted in the booklet of regulations, together with telephone numbers and
23 instructions for obtaining a list of those areas from regional department offices.

24 (c) Commencing with the booklet of sportfishing regulations published in 1987,
25 the booklet shall also contain any human health advisories relating to fish that are
26 formally issued by the State Department of Health Services, or summaries of those
27 human health advisories. The summaries shall be prepared in consultation with the
28 State Department of Health Services.

29 **Comment.** Subdivisions (a) and (b) of Section 7115 continue former Section 217.5 without
30 substantive change.

31 Subdivision (c) continues former Section 217.6 without substantive change.

32 **Fish & Game Code § 7120 (amended). Bag limit**

33 SEC. _____. Section 7120 of the Fish and Game Code is amended to read:

34 7120. It is unlawful for any person to possess more than one daily bag limit of
35 any fish taken under a license issued pursuant to Section 714 or Article 3
36 (commencing with Section 7145) unless authorized by regulations adopted by the
37 commission pursuant to Section 206.

38 **Comment.** Section 7120 is amended to update a cross-reference.

1 **Government Code § 11343.4 (amended). Effective date of regulation**

2 SEC. _____. Section 11343.4 of the Government Code is amended to read:

3 11343.4. (a) Except as otherwise provided in subdivision (b), a regulation or an
4 order of repeal required to be filed with the Secretary of State shall become
5 effective on a quarterly basis as follows:

6 (1) January 1 if the regulation or order of repeal is filed on September 1 to
7 November 30, inclusive.

8 (2) April 1 if the regulation or order of repeal is filed on December 1 to February
9 29, inclusive.

10 (3) July 1 if the regulation or order of repeal is filed on March 1 to May 31,
11 inclusive.

12 (4) October 1 if the regulation or order of repeal is filed on June 1 to August 31,
13 inclusive.

14 (b) The effective dates in subdivision (a) shall not apply in all of the following:

15 (1) The effective date is specifically provided by the statute pursuant to which
16 the regulation or order of repeal was adopted, in which event it becomes effective
17 on the day prescribed by the statute.

18 (2) A later date is prescribed by the state agency in a written instrument filed
19 with, or as part of, the regulation or order of repeal.

20 (3) The agency makes a written request to the office demonstrating good cause
21 for an earlier effective date, in which case the office may prescribe an earlier date.

22 (4)(A) A regulation adopted by the Fish and Game Commission pursuant to that
23 is governed by Article 4 2 (commencing with Section 200 250) of Chapter 2 of
24 Division 1 of the Fish and Game Code.

25 (B) A regulation adopted by the Fish and Game Commission that requires a
26 different effective date in order to conform to a federal regulation.

27 **Comment.** Section 11343.4 is amended to update a cross-reference.

28 **Health and Safety Code § 131052 (amended). Transfer of jurisdiction**

29 SEC. _____. Section 131052 of the Health and Safety Code is amended to read:

30 131052. In implementing the transfer of jurisdiction pursuant to this article, the
31 State Department of Public Health succeeds to and is vested with all the statutory
32 duties, powers, purposes, responsibilities, and jurisdiction of the former State
33 Department of Health Services as they relate to public health as provided for or
34 referred to in all of the following provisions of law:

35 (1) Sections 550, 555, 650, 680, 1241, 1658, 2221.1, 2248.5, 2249, 2259,
36 2259.5, 2541.3, 2585, 2728, 3527, 4017, 4027, 4037, 4191, 19059.5, 19120,
37 22950, 22973.2, and 22974.8 of the Business and Professions Code.

38 (2) Sections 56.17, 1812.508, and 1812.543 of the Civil Code.

39 (3) Sections 8286, 8803, 17613, 32064, 32065, 32066, 32241, 49030, 49405,
40 49414, 49423.5, 49452.6, 49460, 49464, 49565, 49565.8, 49531.1, 56836.165, and
41 76403 of the Education Code.

1 (4) Sections 405, 6021, 6026, 18963, 30852, 41302, and 78486 of the Food and
2 Agricultural Code.

3 (5) Sections 307, 355, 422, 7572, 7574, 8706, 8817, and 8909 of the Family
4 Code.

5 (6) Sections ~~217.6, 1507,~~ 1786, 4011, 5671, 5674, 5700, 5701, 5701.5, 7115,
6 7715, and 15700 of the Fish and Game Code.

7 (7) Sections 855, 51010, and 551017.1 of the Government Code. For purposes
8 of subdivision (s) of Section 6254 of the Government Code, the term “State
9 Department of Health Services” is hereby deemed to refer to the State Department
10 of Public Health.

11 (8) (A) Sections 475, 1180.6, 1418.1, 1422.1, 1428.2, 1457, 1505, 1507.1,
12 1507.5, 1570.7, 1599.2, 1599.60, 1599.75, 1599.87, 2002, 2804, 11362.7, 11776,
13 11839.21, 11839.23, 11839.24, 11839.25, 11839.26, 11839.27, 11839.28,
14 11839.29, 11839.30, 11839.31, 11839.32, 11839.33, 11839.34, 17920.10, 17961,
15 18897.2, 24185, 24186, 24187, 24275, 26101, 26122, 26134, 26155, 26200, and
16 26203.

17 (B) Chapters 1, 2, 2.05, 2.3, 2.35, 2.4, 3.3, 3.9, 3.93, 3.95, 4, 4.1, 4.5, 5, 6, 6.5, 8,
18 8.3, 8.5, 8.6, 9, and 11 of Division 2.

19 (C) Articles 2 and 4 of Chapter 2, Chapter 3, and Chapter 4 of Part 1, Part 2 and
20 Part 3 of Division 101.

21 (D) Division 102, including Sections 102230 and 102231.

22 (E) Division 103, including Sections 104145, 104181, 104182, 104182.5,
23 104187, 104191, 104192, 104193, 104316, 104317, 104318, 104319, 104320,
24 104321, 104324.2, 104324.25, 104350, 105191, 105251, 105255, 105280,
25 105340, and 105430.

26 (F) Division 104, including Sections 106615, 106675, 106770, 108115, 108855,
27 109282, 109910, 109915, 112155, 112500, 112650, 113355, 114460, 114475,
28 114650, 114710, 114850, 114855, 114985, 115061, 115261, 115340, 115736,
29 115880, 115885, 115915, 116064, 116183, 116270, 116365.5, 116366, 116375,
30 116610, 116751, 116760.20, 116825, 117100, 117924, and 119300.

31 (G) Division 105, including Sections 120262, 120381, 120395, 120440, 120480,
32 120956, 120966, 121155, 121285, 121340, 121349.1, 121480, 122410, and
33 122420.

34 (H) Part 1, Part 2 excluding Articles 5, 5.5, 6, and 6.5 of Chapter 3, Part 3 and
35 Part 5 excluding Articles 1 and 2 of Chapter 2, Part 7, and Part 8 of Division 106.

36 (9) Sections 799.03, 10123.35, 10123.5, 10123.55, 10123.10, 10123.184, and
37 11520 of the Insurance Code.

38 (10) Sections 50.8, 142.3, 144.5, 144.7, 147.2, 4600.6, 6307.1, 6359, 6712,
39 9009, and 9022 of the Labor Code.

40 (11) Sections 4018.1, 5008.1, 7501, 7502, 7510, 7511, 7515, 7518, 7530, 7550,
41 7553, 7575, 7576, 11010, 11174.34, and 13990 of the Penal Code.

42 (12) Section 4806 of the Probate Code.

1 (13) Sections 15027, 25912, 28004, 30950, 41781.1, 42830, 43210, 43308,
2 44103, and 71081 of the Public Resources Code.

3 (14) Section 10405 of the Public Contract Code.

4 (15) Sections 883, 1507, and 7718 of the Public Utilities Code.

5 (16) Sections 18833, 18838, 18845.2, 18846.2, 18847.2, 18863, 30461.6,
6 43010.1, and 43011.1 of the Revenue and Taxation Code.

7 (17) Section 11020 of the Unemployment Insurance Code.

8 (18) Sections 22511.55, 23158, 27366, and 33000 of the Vehicle Code.

9 (19) Sections 5326.9, 5328, 5328.15, 14132, 16902, and 16909, and Division 24
10 of the Welfare and Institutions Code. Payment for services provided under the
11 Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program
12 pursuant to subdivision (aa) of Section 14132 and Division 24 shall be made
13 through the State Department of Health Care Services. The State Department of
14 Public Health and the State Department of Health Care Services may enter into an
15 interagency agreement for the administration of those payments. This paragraph,
16 to the extent that it applies to the Family PACT Waiver Program, shall become
17 inoperative on June 30, 2012.

18 (20) Sections 13176, 13177.5, 13178, 13193, 13390, 13392, 13392.5, 13393.5,
19 13395.5, 13396.7, 13521, 13522, 13523, 13528, 13529, 13529.2, 13550, 13552.4,
20 13552.8, 13553, 13553.1, 13554, 13554.2, 13816, 13819, 13820, 13823, 13824,
21 13825, 13827, 13830, 13834, 13835, 13836, 13837, 13858, 13861, 13862, 13864,
22 13868, 13868.1, 13868.3, 13868.5, 13882, 13885, 13886, 13887, 13891, 13892,
23 13895.1, 13895.6, 13895.9, 13896, 13896.3, 13896.4, 13896.5, 13897, 13897.4,
24 13897.5, 13897.6, 13898, 14011, 14012, 14015, 14016, 14017, 14019, 14022,
25 14025, 14026, 14027, and 14029 of the Water Code.

26 **Comment.** Section 131052 is amended to update a cross-reference to former Fish and Game
27 Code Section 217.6, which is continued by Fish and Game Code Section 7115. The section is also
28 amended to delete a cross-reference to Fish and Game Code Section 1507, which has been
29 repealed.



via U.S. mail and e-mail <bhebert@clrc.ca.gov>, <scohen@clrc.ca.gov>

September 1, 2015

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

Re: Comments on Technical Revisions and Minor Substantive Improvements – Part 2.

Dear Mr. Cappozzola:

Regarding the California Law Revision Commission (“CLRC”) June 2015 tentative recommendation to make minor technical and non-substantive improvements to the Fish and Game Code, the Department of Fish and Wildlife has the following comments:

Fish and Game Code Sections 200 and 201

Proposed section 200 (a) conflicts with proposed section 200(b)(1). Section 200(a) authorizes the Fish and Game Commission (“Commission”) to regulate a natural resource, but section 200(b)(1) provides that the Commission is not authorized to regulate a natural resource. Therefore, as proposed, section 200 contains an inherent contradiction and does not reflect the substance of the original legislative language.

We assume the goal of the revised section was to reflect the language in existing section 201. That section provides that the Commission cannot “regulate natural resources, commercial or other activity connected therewith, **except as specifically provided.**” The revised section 200 must include the bold language to reflect the original limitation on the Commission’s regulatory authority to those topics specifically outlined in statute. In order to reflect that limitation, the CLRC would need to continue the phrase “**except as specifically provided**” in its new proposed section 200(b). Making that addition would also resolve the contradiction that currently exists between proposed section 200(a) and proposed section 200(b)(2).

Fish and Game Code Sections 203 and 205

The proposal to repeal existing sections 203 and 205 and, instead, “generalize” the Commission’s authority into one new section that addresses all of the species currently

addressed by sections 203 and 205 results in a substantive change in law. The Department believes these sections should be revised to avoid substantive legal changes.

The new "generalized" proposal changes the list of animals the Commission may regulate and changes how the Commission regulates those animals. (See proposed sections 250 and 280). For example, under current law, the Commission may "establish, change, or abolish restrictions based upon sex, maturity, or other physical distinction" for resident game birds, game mammals and furbearing mammals." (Fish and Game Code section 203). Under the new proposal, the Commission would have that same authority over "any bird, mammal, fish, amphibian or reptile." (See proposed section 250). This is just one example of how the proposed "generalized" language in proposed sections 250 and 280 expands on the Commission's existing statutory and regulatory authority.

Fish and Game Code Section 219

The CLRC's second tentative recommendation invited comment on the legal and policy justification for section 219 of the Fish and Game Code. The Department understands that past proposals to amend section 219 suggested that it was intended to provide the Commission with flexibility to respond to emergency situations. The section has been used sparingly in the past. Attached to this comment letter is a 1991 report to the Commission with additional information on the Commission's past use of section 219.

Thank you for considering the Department's input as you move through the process of developing proposals for recodification.

Sincerely,



Angela Donlan
Senior Staff Counsel

Enclosure

FISH AND GAME COMMISSION

AB1361 (C) (M)

DATE: May 15, 1990

TO: All Commissioners

FROM: Executive Secretary

SUBJECT: Utilization of Section 219 of Fish and Game Code

The following is a summary of those sections of the Fish and Game Code that have been superseded by Commission regulations in Title 14, CCR:

<u>Title 14 Section</u>	<u>Regulation Subject</u>	<u>Superseded Fish and Game Code Section(s)</u>
2.15	Use of lights	2005
2.35	Taking fish near dams fishways, screens and egg-taking stations	5502
2.65	Use of dogs in pursuing and/or hunting of mammals	86 3005.5 3960 4756
460	Fisher, marten, river otter, desert kit fox and red fox	4001
462	Muskrat and mink	4001
463	Beaver	4001
465.5	Trapping	4004(g)
504	Possession, transportation and importation of migrating game birds	2001
600.4	Licensed domesticated migratory game bird shooting areas	3304, 3306, 3307

ANALYSIS

Section 219 of the Code has been used sparingly by the Commission to resolve inconsistencies within the Code. The following is an in-depth analysis of each of those instances where Section 219 of the Code has been implemented to supersede a specific code provision. It should be noted that the Commission is only authorized to utilize Section 219 of the Code when adopting trapping, sport fishing and hunting regulations pursuant to its general regulatory powers found in sections 200-221 of the Code. The Commission is not authorized to utilize Section 219 of the code to supersede any commercial fishing statutes nor any other statutory provisions which are not related specifically to the setting of seasons, bag limits or methods of take for game birds and mammals, furbearing mammals, fish, amphibia and reptiles.

It should also be noted that this analysis has resulted in the deletion of references to the use of Section 219 of the Code in sections 2.10, 2.20 and 474, Title 14, CCR. The use of the provisions of Section 219 of the Code is no longer necessary due to the fact that the Code has been amended to eliminate the inconsistencies or that the legal question of ambiguity or inconsistency has been resolved.

Section 2.15, Title 14, CCR, Use of Lights.

Section 2.15 of Title 14 provides:

Lights may be used when fishing at night when and where such fishing is permitted. Lights may be used on or as part of any fishing tackle (this supersedes Section 2005 of the Fish and Game Code).

NOTE: Authority cited: Sections 200, 202, 205, 210, 219, 220 and 2005, Fish and Game Code.

Reference: Sections 200-202, 203.1, 205, 210, 215-222 and 2005, Fish and Game Code.

Section 2005, Exceptions for use of Artificial Lights; Sniperscope.

Section 2005 of the Code provides:

It is unlawful to use an artificial light to assist in the taking of game birds, game mammals, or game fish, except that this section shall not apply to sport fishing in ocean waters or other waters where night fishing is permitted if the lights are not used on or as part of the fishing tackle, commercial fishing, nor to the taking of mammals, the taking of which is governed by Article 2 (commencing with Section 4180) of Chapter 3, Part 3, Division 4.

It is unlawful for any person or one or more persons, to throw or cast the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest where game mammals, fur-bearing mammals,

or nongame mammals are commonly found, or upon any game mammal, fur-bearing mammals, or nongame mammal, while having in his possession or under his control any firearm or weapon with which such mammal could be killed, even though the mammal is not killed, injured, shot at, or otherwise pursued.

It is unlawful to use or possess at any time any infrared or similar light used in connection with an electronic viewing device sometimes designated as a sniperscope to assist in the taking of birds, mammals, amphibia, or fish.

The provisions of this section shall not apply to the following:

(a) To the use of hand held flashlight no larger, nor emitting more light, than a two-cell, three-volt flashlight, provided such light is not affixed in any way to a weapon, or to the use of a lamp or lantern which does not cast a directional beam of light.

(b) In the case of headlights of a motor vehicle operated in a usual manner and there is no attempt or intent to locate a game mammal, fur-bearing mammal, or nongame mammal.

(c) To the owner, or his employee, of land devoted to the agricultural industry while on such land, or land controlled by such an owner and in connection with such agricultural industry.

(d) To such other uses as the commission may authorize by regulation.

No person shall be arrested for violation of this section except by a peace officer.

The Commission used Section 219 of the Code to supersede Section 2005 of the Code to permit the use of commercially manufactured "fish alarms" and "lighted" terminal gear used by sportsmen. Some of the "fish alarms" utilize a small blinking light to alert the angler when a fish is biting. There are also some lures which utilize a light or phosphorescence source to illuminate the lure. There was a consistency question concerning the use of these types of "lights" while sport fishing.

Recommendation:

The need to use Section 219 in the Code could be eliminated if Section 2005 of the Code were amended as follows:

Section 2005, Exceptions for use of Artificial Lights; Sniperscope, of the Code provides:

It is unlawful to use an artificial light to assist in the taking of game birds, game mammals, or game fish, except that this section shall not apply to sport fishing in ocean waters or other waters where night fishing is permitted ~~if the lights are not used on or as part of the fishing tackle,~~ commercial fishing, nor to the taking of mammals, the taking of which is governed by Article 2 (commencing with Section 4180) of Chapter 3, Part 3, Division 4.

It is unlawful for any person or one or more persons, to throw or cast the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest where game mammals, fur-bearing mammals, or nongame mammals are commonly found, or upon any game mammal, fur-bearing mammals, or nongame mammal, while having in his possession or under his control any firearm or weapon with which such mammal could be killed, even though the mammal is not killed, injured, shot at, or otherwise pursued.

It is unlawful to use or possess at any time any infrared or similar light used in connection with an electronic viewing device sometimes designated as a sniperscope to assist in the taking of birds, mammals, amphibia, or fish.

The provisions of this section shall not apply to the following:

(a) To the use of hand held flashlight no larger, nor emitting more light, than a two-cell, three-volt flashlight, provided such light is not affixed in any way to a weapon, or to the use of a lamp or lantern which does not cast a directional beam of light.

(b) In the case of headlights of a motor vehicle operated in a usual manner and there is no attempt or intent to locate a game mammal, fur-bearing mammal, or nongame mammal.

(c) To the owner, or his employee, of land devoted to the agricultural industry while on such land, or land controlled by such an owner and in connection with such agricultural industry.

(d) To such other uses as the commission may authorize by regulation.

No person shall be arrested for violation of this section except by a peace officer.

Section 2.35, Title 14, CCR, Taking Fish Near Dams, Fishways, Screen and Egg-Taking Stations.

Section 2.35 of Title 14 provides:

No fish may be taken within 250 feet of:

- (a) Any fishway or any egg-taking station.
- (b) Any dam or any weir or rack which has a fishway or an egg-taking station.
- (c) The upstream side of any fish screen.

Fish may be taken upstream or downstream from any dam that does not have a fishway or egg-station (this supersedes Section 5502 of the Fish and Game Code).

NOTE: Authority cited: Sections 200, 202, 205, 210, 219 and 220, Fish and Game Code.
Reference: Sections 200-202, 203.1, 205, 210 and 215-222, and 5502, Fish and Game Code.

Section 5502 of the Code, Terms of Permit, provides:

It is unlawful to take any fish within 250 feet of any fishway, within 150 feet of the lower side of any dam, or within 150 feet of the upper side of any fish screen.

The Commission utilized Section 219 of the Code to permit additional angling opportunity for American shad and striped bass on the American River immediately below the fish weir and fishway at the Department's Nimbus Fish Hatchery. The intent of Section 2005 of the Code is to protect migratory salmon and steelhead which enter the state's inland waters such as the American River in the fall, winter and early spring. These fish are present in the American River and utilize the fishway at the Nimbus Hatchery, when operating, during the period of September 15 through March 31. During the period of April 1 through September 14, the fish weir and fishway are not utilized by the Department to move salmon or steelhead into the Nimbus Hatchery. Allowing the sportsmen to have access to the available American shad and striped bass that move into the area directly below the closed Nimbus Hatchery fishway does not jeopardize the salmon or steelhead resources.

Recommendation:

It is suggested that Section 5502 of the Fish and Game Code be amended to read:

Section 5502. Terms of permit.

~~It is unlawful to take any fish within 250 feet of any fishway, within 150 feet of the lower side of any dam, or within 150 feet of the upper side of any fish screen.~~

Except as authorized by regulations of the Commission, no fish may be taken within 250 feet of:

(a) Any fishway or any egg-taking station.

(b) Any dam or any weir or rack which has a fishway or an egg-taking station.

(c) The upstream side of any fish screen.

Fish may be taken upstream or downstream from any dam that does not have a fishway or egg-taking station.

Section 265, Title 14, CCR, Use of Dogs in Persuing and/or Hunting of Mammals

Section 265 of Title 14 provides:

Section 265, Title 14, CCR, is amended to read:

265. Use of Dogs in Pursuit and/or Hunting of Mammals.

(a) Use of Dogs Prohibited. The use of dogs for pursuit and/or hunting of mammals is prohibited as follows:

(1) From the first Saturday in April through the day preceding the opening of general deer season in the following areas:

(A) Central California: Napa County north of Highway 128 and east of Highway 29; Lake County east of a line beginning at the Lake-Napa county line and Highway 29; northwest on Highway 29 to Highway 20; northwest on Highway 20 to the Lake-Mendocino county line; Mendocino County east of Highway 101 and north of Highway 20; Sierra County and those portions of Nevada, Placer, Amador and Calaveras counties east of Highway 49; and El Dorado County east of the following line: Beginning at the junction of Highway 49 and the Placer-El Dorado county line; south on Highway 49 to Highway 193 at Cool; east and south along Highway 193 to Highway 49 in Placerville; south on Highway 49 to the Amador-El Dorado county line.

(B) Northern California: Plumas and Trinity counties; Butte County east of the following line: Beginning at the junction of Highway 99 and the Butte-Tehama county line; south and east along Highway 99 to Highway 149; south and east along Highway 149 to Highway 70; south along Highway 70 to the Butte-Yuba county line; Del Norte County east of Highway 101; Glenn County west of a line beginning at the intersection of the Stonyford-Ladoga Road and the Glenn-Tehama county line; south along this road to the Colusa-Glenn county line; Humboldt County north and east of Highways 36 and 101; Siskiyou County south and west of the following line: From the Oregon-California state line south on Interstate 5 to its intersection with Highway 97 at the town of Weed, north on Highway 97 to the town of Macdoel; south from Macdoel on the Mt. Hebron Road to the Redrock Road; east on the Redrock Road to the Davis Road; north on Davis Road to the Gold Digger Pass Road; east on the Gold Digger Pass Road to the western boundary of the Lava Beds National Monument; north and east on said boundary to the Siskiyou-Modoc county line; Shasta County south and west of Highways 89 and 44 and north of the following line: where the Trinity National Forest boundary intersects the Shasta-Tehama county line; north on said boundary to Highway 36 near the town of Platina; east on Highway 36 to County Road A16; north on Road A16 to the City of Redding; north on Interstate 5 to the south shore of Shasta Lake; east and north along the shore of Shasta Lake to Fender's Ferry Road; southeast on Fender's Ferry Road to Highway 299; southwest on Highway 299 to Oakrun; southwest on the Oakrun Road to Fern Road; east and south on Fern Road to the town of Whitmore; south on Ponderosa Way to Highway 44 near Innwood; east on Highway 44 and the Wilson Hill Road to the Shasta-Tehama county line; those portions of Tehama County within the Mendocino and Trinity National Forests and east of the Ponderosa Truck Trail.

(C) Southern Sierra: Those portions of Tuolumne, Mariposa, Madera, Fresno and Tulare counties east of the following line: Beginning at the intersection of Highway 49 and the Calaveras-Tuolumne county line; south on Highway 49 to Highway 120; east on Highway 120 to the Smith Station Road (J20); south on the Smith Station Road (J20) to the Greeley Hill Road; east on the Greeley Hill Road to the North Fork of the Merced River at Bower Cave; south on the North Fork of the Merced River to Road 3S15 (Black Mountain Road); east on Road 3S15 to Forest Service Road 3S02; southwest on Forest Service Road 3S02 crossing the U.S. Forest Service-Bureau of Land Management property boundary in Section 28 located in Township 3S, Range 18E to Forest Service Road 2S05 (Bull

Creek Road); south on Forest Service Road 2505 (Bull Creek Road) to the Main Fork of the Merced River; west on the Main Fork of the Merced River to Highway 49; south on Highway 49 to Highway 140 at Mariposa; north on Highway 140 to the South Fork of the Merced River; east along the South Fork of the Merced River to Hite Cove; south on the U.S. Forest Service Road and its continuation from Hite Cove through Jerseydale Station and Darrah to the Triangle Road; south along the Triangle Road to Highway 49; south along Highway 49 to Highway 41 at Oakhurst; north along Highway 41 to its intersection with the Bass Lake Road at Yosemite Forks; south along Bass Lake Road and Road 274 past Bass Lake on the east side of the lake to the junction with the Mammoth Pool Road at North Fork; south along the North Fork-Auberry Road to the San Joaquin River; east along the San Joaquin River to Italian Bar Road at the Italian Bar Bridge; south on Italian Bar Road to Sugar Loaf Road; south on Sugar Loaf Road to the patrol road along the transmission right-of-way; south on the patrol road along the transmission right-of-way to Auberry Road near Pina Ridge; east on Auberry Road to Highway 168; east on Highway 168 to Toll House Road; south on Toll House Road to Peterson Mill Road; east on Peterson Mill Road to Rush Creek Road at Soaproot Saddle; south on Rush Creek Road to Big Creek Road; east on Big Creek Road to Dinkey-Trimmer Road at Haslett Basin; east on Dinkey-Trimmer Road to Sycamore Springs Road; east on Sycamore Springs Road to Black Rock Road at Balch Camp; east on the Black Rock Road to the Rodgers Ridge Road at Black Rock Station; east along Rodgers Ridge Road to Garlic Spur; south on Garlic Spur to the Kings River; west along the Kings River to Verplank Ridge; south on Verplank Ridge-Hoise Ridge to Highway 180 near Cherry Gap; south along Highway 180 to the north boundary of Kings Canyon National Park; south along that park boundary and along the west boundary of Sequoia National Park to the boundary of Sequoia National Forest between Grouse Peak and Dennison Mountain; south along the common line between R29E and R30E, M.D.B.M. to the boundary of the Sequoia National Forest; east and south along that boundary to Forest Road 19S06; southeast along that road to the west boundary of Mountain Home State Forest; south and east along that boundary to Forest Trail 30E15; southeast along 30E15 to the Doyle Springs Road; southwest along Doyle Springs Road to Camp Wishon; southeast along the Alder Creek Grove-Hossack Meadow Road to Camp Nelson; south along Highway 190 and the Coy Flat Road to the boundary of the Tule River Indian Reservation; south along the east boundary of that reservation to Parker Peak; southeast through Upper Parker Meadow to Parker Pass; south through Starvation Creek Grove to the southwest corner of Section 15, T23S, R31E, M.D.B.M.; east to the northeast corner of Section 22, T23S, R31E, M.D.B.M.; south approximately 6 miles to Sugarloaf campground; southeast along the Forest Road 24S06 through Portuguese Pass to the Tulare-Kern County line; that portion of Kern County within a line beginning where the Tulare-Kern county line intersects the west boundary of the Sequoia National Forest; south along the said boundary to the Poso Flat-Davis Station Road; northeast along said road through Davis Flat and Shirley Meadow to Forest Highway 90 at Greenhorn Summit; northeast along Forest Highway 90, Cow Creek and Bull Run Creek to the Tulare-Kern county line; west along said county line to the point of beginning; and those portions of Inyo and Mono counties west of Highway 395.

(D) Southern California: Those portions of Los Angeles, Ventura and Santa Barbara counties within the Los Padres and Angeles National Forests; and those portions of San Bernardino County within the San Bernardino and Angeles National Forests.

(E) If the department determines that opening additional areas to the pursuit and/or hunting of mammals would not have a deleterious effect on the

resource, it may do so. The department shall inform the commission and the public via the news media of any additional areas opened to the pursuit and/or hunting of mammals.

(2) During the archery seasons for deer and/or bear.

(b) The use of dogs for pursuit and/or hunting of mammals is permitted as follows:

(1) In department authorized dog training and field trials.

(2) In pursuing and/or taking depredating animals by federal and county animal damage control officers or by permittees authorized under a depredation permit issued by the department.

(3) During the general deer season no more than one dog per hunter may be used in the area where the general deer season is open except during the general bear season when there is no limit on the number of dogs used, and in the following part of Imperial County: Beginning at the junction of Highway 111 and the Imperial-Riverside county line south to Beal Road; east on Beal Road to East Highland Canal; south on East Highland Canal to Interstate 8; southeast on Interstate 8 to Highway 98; west on Highway 98 to West Side Main Canal; north on West Side Main Canal to Forrester Road (County Highway S30); north on Forrester Road (County Highway S30) to Highway 86; northwest on Highway 86 to the Imperial-Riverside County line; and east along the Imperial-Riverside county line to the point of beginning. (This section supersedes Section 4756 of the Fish and Game Code relating to the use of dogs to pursue bear while the general deer season is open.)

(4) Up to three dogs per hunter may be used for the purpose of taking wild pigs, except that:

(A) no more than one dog per hunter may be used in an area where the general deer season is open.

(B) there is no limit on the number of dogs that may be used during the general bear season; and

(C) no dogs may be used within the closures described in Section 265(a).

(5) Furbearers and nongame mammals as specified in Section 472(a) may be taken with the aid of dogs during the appropriate open season except for closures and restrictions described in subsections 265(a) and (b).

(6) The use of dogs to hunt mountain lions is permitted pursuant to the regulations contained in Section 369.

(c) Dog Training: In the course of breaking, training, or practicing dogs, such dogs may be permitted to pursue mammals subject to the following seasons and conditions: (Notwithstanding the provisions of Section 86 of the Fish and Game Code, for the purposes of implementing this section, "pursue" or "attempt to pursue" do not constitute "take". This section supersedes Sections 3005.5 and 3960 of the Fish and Game Code.) Except for the prohibitions in subsections 265(a) and (b), Title 14, CCR, dog training is allowed as follows:

(1) Seasons:

(A) Except in areas where the mountain lion hunting season is open, mountain lions may be pursued with the aid of dogs beginning the second Saturday in October for a period of 138 consecutive days statewide if the following conditions are met:

1. An application for a permit to pursue mountain lions shall be made on the form supplied by the department and shall contain such information as the department may require including but not limited to area (this may be up to 3 adjacent counties), approximate dates, names and addresses of people in the party and the purpose of the pursuit.

2. The permit to pursue mountain lions shall be in the immediate possession of the permittee while he is in pursuit of mountain lions.

3. No person shall knowingly pursue an immature mountain lion (less than one year old).

4. A report providing the results of the pursuits and other such information as the department may require shall be submitted to the Department of Fish and Game, Wildlife Management Division, 1416 Ninth Street, Sacramento, CA 95814, within 30 days of the expiration of the permit. Mountain lion pursuit-only permit holders who fail to comply with this section shall not apply for a mountain lion pursuit-only permit the following license year. If they apply, they shall be denied a mountain lion pursuit-only permit.

5. Any person who is convicted of a violation of the provisions of Section 265 shall not apply for a mountain lion pursuit-only permit for the following license year.

(B) Gray fox may be pursued with the aid of dogs from March 1 through the day preceding the opening of the gray fox season, except for closures and restrictions described in subsections 265(a) and (b).

(C) Raccoon may be pursued with the aid of dogs from April 1 through the day preceding the opening of the raccoon season, except for closures and restrictions described in subsections 265(a) and (b).

(D) Bobcat may be pursued with the aid of dogs from the day following the close of bobcat season through the day preceding the opening of the bobcat season, except for closures and restrictions described in subsections 265(a) and (b).

(2) Conditions:

(A) No person shall kill, capture or injure any animal, nor shall any person's dog be allowed to kill, capture or injure any animal.

(B) No firearm, archery gear, crossbow or other weapon capable of killing or capturing any animal may be possessed by any person while using dogs under the authority of a permit to pursue mountain lions or by any person training or practicing dogs during the seasons described in subsection (c)(1) of this section.

(C) Pursuits may not be started within 400 yards of a baited area as described in Section 257.5 of these regulations.

Authority: Sections 200, 202, 203 and 219, Fish and Game Code.

Reference: Sections 200, 202, 203, 203.1, 207 and 4756, Fish and Game Code.

Sections 3005.5 and 4756 of the Fish and Game Code read as follows:

Section 3005.5, Capture or possession of bird or mammal; regulations.

It is unlawful to capture any game mammal, game bird, nongame bird, nongame mammal, or furbearer, or to possess or confine any live game mammal, game bird, nongame bird, nongame mammal, or furbearer taken from the wild, except as provided by this code or regulations made pursuant thereto. Any bird or mammal possessed or confined in violation of this section shall be seized by the department.

The commission may promulgate regulations permitting the temporary confinement of game mammals, game birds, nongame birds, nongame mammals, or furbearers for the purpose of treating the animals, if injured or diseased.

Section 4756, Use of dogs to hunt bear; unlawful:

Except as provided in this section it is unlawful to use dogs to hunt, pursue, or molest bears.

The use of one dog per hunter is permitted for the hunting of bears during the time that the season is open for the taking of deer in the area of the state affected.

The use of more than one dog per hunter is permitted in the hunting of bears during the open season on bears in the area of the state affected except during the period when archery deer seasons or regular deer seasons are open.

Subsection 265(b)(3) permits the use of more than one dog to be used by a hunter pursuing bear during a portion of the archery and regular deer seasons. Section 4756 of the Code which is intended to provide protection to bears specifically permits the use of more than one dog per hunter during the open bear season, except when and where the archery or regular deer seasons are open. Section 219 of the Code was utilized to permit the scheduling of the bear season to run parallel with a portion of the deer season rather than after the deer season. The intent of the Commission was to provide for maximum recreational opportunity, yet reduce the overall time that hunter with dogs would be permitted to be in the woods. This reduced the impact to both deer and bear.

Recommendation:

Section 4756 of the Code should be amended to read:

Except as provided in this section or by regulations of the commission, it is unlawful to use dogs to hunt, pursue, or molest bears.

The use of one dog per hunter is permitted for the hunting of bears during the time that the season is open for the taking of deer in the area of the state affected.

The use of more than one dog per hunter is permitted in the hunting of bears during the open season on bears in the area of the state affected except during the period when archery deer seasons or regular deer seasons are open.

Section 86 of the Code defines take as:

"Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

The Commission in subsection 265(c) clarifies that the use of dogs during the "no take" dog training seasons to lawfully "pursue" mountain lions, gray fox, raccoon, and bobcat does not constitute "take". Without this clarification there technically would be no dog-training season.

Recommendation:

This reference will be deleted when the Commission considers the adoption of the 1991-92 mammal hunting and trapping regulations next year.

Subsection 265(c)(1)(A) authorizes a restricted "no take" dog training season for mountain lions, a big game mammal.

Section 3960, Injurious Dogs, provides:

It is unlawful to permit or allow any dog to pursue any big game mammal during the closed season on such mammal, to pursue any fully protected, rare, or endangered mammal at any time, or to pursue any mammal in a game refuge or ecological reserve if hunting within such refuge or ecological reserve is unlawful.

Employees of the department may capture any dog not under the reasonable control of its owner or handler, when such uncontrolled dog is pursuing, in violation of this section, any big game, fully protected, rare, or endangered mammal.

Employees of the department may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any big game mammal during the closed season on such mammal, and they may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury on any fully protected, rare, or endangered mammal at any time.

Employees of the department may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any mammal in a game refuge or ecological reserve if hunting within such refuge or ecological reserve is unlawful.

No criminal or civil liability shall accrue to any department employee as a result of enforcement of this section. For the purpose of this section, "pursue" means pursue, run, or chase.

Owners of dogs with identification, that have been captured or dispatched, shall be notified within 72 hours after capture or dispatch.

Without the Commission's use of Section 219, there would be an inconsistency with the Commission's authority under Section 203 to provide for a dog training season for mountain lions and the provisions of Section 3960 of the Code which precludes the pursuit of game mammals during the closed season. The intent of Section 3960 of the Code is to prohibit the running and injuring of wildlife by uncontrolled free roaming dogs. The Commission has provided a "no take" dog training season. Yet to avoid any enforcement question regarding the possible conflict between Subsection 265(c)(1)(A) and Section 3960 of the Code, the Commission made it clear that the provisions of 265(c)(1)(A) were to prevail.

Recommendation:

To eliminate the need for using Section 219 of the Code in this circumstance, Section 3960 of the Code should be amended to read:

Except as provided by regulations of the Commission it is unlawful to permit or allow any dog to pursue any big game mammal during the closed season on such mammal, to pursue any fully protected, threatened, or endangered mammal at any time, or to pursue any mammal in a game refuge or ecological reserve if hunting within such refuge or ecological reserve is unlawful.

Employees of the department may capture any dog not under the reasonable control of its owner or handler, when such uncontrolled dog is pursuing, in violation of this section, any big game, fully protected, rare, or endangered mammal.

Employees of the department may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any big game mammal during the closed season on such mammal, and they may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury on any fully protected, rare, or endangered mammal at any time.

Employees of the department may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any mammal in a game refuge or ecological reserve if hunting within such refuge or ecological reserve is unlawful.

No criminal or civil liability shall accrue to any department employee as a result of enforcement of this section. For the purpose of this section, "pursue" means pursue, run, or chase.

Owners of dogs with identification, that have been captured or dispatched, shall be notified within 72 hours after capture or dispatch.

There was also a clarity problem with a conflict between the provisions of Subsection 265(c) and Section 3005.5 of the Code. Technically when a dog(s) has treed an animal, the person in control of the dog(s) has "captured" that animal even though it is released and it has not been made part of their bag. With this one clarity exception, the current provisions of the Section 3005.5 provide a needed prohibition on the capture of live wildlife.

Recommendation:

To eliminate the need to use Section 219 of the Code and to clarify this issue, Section 3005.5 of the Code should be amended to read:

Section 3005.5, Capture or possession of bird or mammal; regulations.

It is unlawful to capture any game mammal, game bird, nongame bird, nongame mammal, or furbearer, or to possess or confine any live game mammal, game bird, nongame bird, nongame mammal, or furbearer taken from the wild, except as provided by this code or regulations promulgated by the commission made pursuant thereto. Any bird or mammal possessed or confined in violation of this section shall be seized by the department.

The commission may promulgate regulations permitting the temporary confinement of game mammals, game birds, nongame birds, nongame mammals, or furbearers for the purpose of treating the animals, if injured or diseased.

Sections 460, Fisher, Marten, River Otter, Desert Kit Fox and Red Fox; 462, Muskrat and Mink; 463, Beaver; and 464, Raccoon, Title 14, CCR.

These sections provide:

462. Fisher, Marten, River Otter, Desert Kit Fox and Red Fox.
May not be taken at any time. (This regulation supersedes Section 4001 of the Fish and Game Code.)

NOTE: Authority cited: Sections 200, 202, 203, and 4008.5, Fish and Game Code. Reference Sections 200-203.1, 208, 207, 211-222, 4000-4004, 4008.5, and 4009.5, Fish and Game Code.

462. Muskrat and Mink.

Except as noted in Section 4180, Fish and Game Code, muskrat and mink may be taken only as follows:

Season and Area: November 15 through March 31, statewide. (This regulation supersedes Section 4001 of the Fish and Game Code.)

Bag and Possession Limit: No limit.

NOTE: Authority cited: Sections 200, 202, 203, and 4008.5, Fish and Game Code. Reference Sections 200-203.1, 208, 207, 211-222, 4000-4004, 4008.5, and 4180, Fish and Game Code.

463. Beaver.

Beaver may be taken only as follows:

(a) Season and Area: November 1 through March 31 in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Monterey, Nevada (except Sagehen Creek), Placer, Plumas, Sacramento, San Joaquin, San Luis Obispo, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba; and those portions of Riverside and San Bernardino counties within 10 miles of the Arizona-California border. (This regulation supersedes Section 4001 of the Fish and Game Code.)

Bag and Possession Limit: There is no bag or possession limit in these areas for the taking of beaver.

(b) Beaver or any part thereof may not be taken in the balance of the state including the counties of Los Angeles, Marin, Mendocino, Napa, Orange, San Benito, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sonoma, and Ventura; and those portions of Riverside and San Bernardino counties further than 10 miles from the California-Arizona border. (This regulation supersedes Section 4001 of the Fish and Game Code.)

NOTE: Authority cited: Sections 200, 202, 203 and 4008.5, Fish and Game Code. Reference Sections 200-203.1, 208, 207, 211-222, 4000-4004, 4008.5 and 4180, Fish and Game Code.

464. Raccoon.

(a) Seasons and Areas:

(1) Raccoon may be taken from July 1 through March 31 in the following areas: All of Imperial County and those portions of Riverside and San Bernardino counties lying south and east of the following line: Beginning at the intersection of Highway 86 with the north boundary of Imperial County; north along Highway 86 to the intersection with Interstate 10; east along Interstate 10 to its intersection with the Cottonwood Springs Road in Section 9, T8S, R11E, S.B.B.M.; north along the Cottonwood Springs Road and the Mecca Dale Road to Amboy; east along Highway 66 to the intersection with Highway 95; north along Highway 95 to the California-Nevada state line.

(2) November 15 through March 31 in the balance of the state.

The Commission has used Section 219 of the Code to supersede both sections 4000 and 4001 of the Code to prohibit the take of depleted species including pine marten, wolverine, river otter, cross fox, silver fox, red fox and the endangered kit fox. The Commission has also superseded Section 4001 of the Code to permit the take of muskrat, mink, beaver and raccoon through March 31, rather than the last day of February. In major part, this 31 day extension of the season for these species is intended to alleviate agricultural depredation by muskrat, beaver and raccoon.

As mink are taken incidental to raccoon, muskrat and beaver trapping operations, the season for this species was also extended. The extension of the seasons for these species is not detrimental to the resources involved. Sections 4152, 4180, 4181, 4182 of the Code provide broad authority for the take of depredating muskrat and beaver, the intent of the Commission was to allow the sportsmen to control the numbers of these species to appropriate management levels in an attempt to preclude the need to issue depredation permits. Section 219 of the Code was used to implement this change.

Recommendation:

The need to utilize Section 219 of the Code could be eliminated by repealing Section 4001. The Commission has general authority under Section 203 of the Code to provide for seasons, bag limits and methods of take for furbearers.

~~Section 4001. Fur-bearing mammals season.~~

~~Fur-bearing mammals may be taken between November 16th and the day before the last day of February.~~

Section 504, Title 14, CCR, Possession, Transportation and Importation of Migratory Game Birds.

Section 504 of Title 14 provides:

(a) No person may possess migratory game birds taken in this state in excess of the daily bag and possession limits as set forth in Sections 500, 501 and 502. The exception to this is for the purpose of transportation where an individual may possess waterfowl taken by another hunter provided that they are tagged by the hunter who has lawfully taken them. The tag must contain his name, address, hunting license number, kinds and numbers of waterfowl taken, and the date and location of kill.

(b) Migratory game birds, except band-tailed pigeons, transported within California must have a fully feathered wing or head attached while being moved from the place where taken to a personal abode or commercial preservation facility. Doves must have a fully feathered wing attached.

3304. Licensed Domesticated Migratory Game Bird Shooting Area.

Pursuant to the provisions of Section 3300 of the Fish and Game Code, licenses to operate licensed domesticated migratory game bird shooting areas may be issued by the Department of Fish and Game on the following terms:

(a) Application Requirements.

(1) If the application indicates that the property upon which a licensed domesticated migratory game bird shooting area is to be operated does not belong to the applicant, he shall declare in the application that he has acquired from the landowner exclusive hunting rights on the said property during the license period. The department may at its discretion require the applicant to provide written verification that he has acquired such hunting rights.

(2) Application shall be made on forms supplied by the department.

(3) Applications shall be signed by the applicant. If the applicant is a corporation the application shall be signed by any one or more duly authorized officers of the corporation. If the applicant is a partnership, the application shall be signed in behalf of the partnership by any one or more of the general partners. If the applicant is a natural person, doing business under a fictitious name, the application shall be signed by such natural person accompanied by a statement of the fictitious name under which he is doing business.

(4) **Appearance of Representative of Applicant.** Whenever it appears to the commission, on information furnished by the department, that a licensee has not complied with all of the terms and conditions of his permit, no license shall be issued to such licensee for the following year unless he supports his application for renewal of his license by an appearance before the commission in person or by an authorized representative and presents evidence which, in the opinion of the commission, constitutes a justifiable excuse for his failure to satisfy the conditions of his permit during the preceding license year. Unless the commission is thus satisfied, no license shall be issued to the applicant for the period covered by the application.

(5) **License Withdrawal.** The department may, in its discretion upon written application by the licensee, allow the licensee to withdraw from his license. In the application the licensee shall state the reasons for his request. The license fee shall not be refunded once the license has been issued.

(b) Suitability of Area for Use as Licensed Domesticated Migratory Game Bird Shooting Area. No license for a licensed domesticated migratory game bird shooting area shall be issued until an investigation has been completed by the department and the department has determined that the property is suitable for the purpose of a licensed domesticated migratory game bird shooting area. The department shall base its determinations on whether or not the proposed shooting area will cause conflicts with wild migratory game bird hunting, or be in violation of state and federal regulations concerning the feeding of migratory waterfowl or the use of live decoys, that the establishment of the shooting area will be in the public interest, and that the operation of a licensed domesticated migratory game bird shooting area at the location specified in the application will not have a detrimental effect upon wild migratory game birds. In the event the license is refused by the department the applicant shall have the right of appeal to the Fish and Game Commission.

(c) Signs. Licensed domesticated migratory game bird shooting area signs shall be posted by the licensee as required by Section 3301 of the Fish and Game Code. Such signs shall be removed prior to September 15 of the succeeding year if no license is granted for that year.

(d) Inspection of Licensed Premises and Domesticated Migratory Game Birds.

(1) The premises where domesticated migratory game birds are held for the purpose of shooting shall be inspected by the Department of Fish and Game for health of birds and sanitation of facilities. Licensees shall pay the department an inspection fee of two cents (\$0.02) for each migratory game bird raised or imported for shooting purposes.

(2) Every person who brings or causes to be brought into this state live domestically reared migratory game birds for shooting purposes shall have such birds inspected for disease and health conditions at the point of origin by a licensed veterinarian. A certificate stating that the birds are disease free and signed by a licensed veterinarian, and endorsed by a federal veterinarian, will be forwarded to the Department of Fish and Game for each shipment of birds. Any shipment of birds not accompanied by a certificate of inspection shall be destroyed or returned to the place of origin by the inspector at his sole cost and responsibility.

(e) **Shooting Season.** The season during which shooting shall be permitted shall be for the period September 1 through May 31.

(f) **Shooting Hours.** Shooting hours for taking domesticated migratory game birds on licensed areas shall be from one-half hour before sunrise to sunset.

(g) **Methods of Take.** Domesticated migratory game birds may be taken on licensed areas only by the following weapons or methods:

(1) Shotguns 10 gauge or smaller using shotshells only and tungsten or bismuth more than three shells in the magazine and chamber combined;

(2) Muzzle-loading shotguns;

(3) Falconry;

(4) Long bow and arrow.

(h) **Reports and Records.** Licensees shall maintain on forms supplied by the department an up-to-date record of the number of domesticated migratory game birds taken and the number of hunters using the area. Such original record shall be submitted to the Department of Fish and Game, Wildlife Protection Branch, 1416 Ninth Street, Sacramento, California 95814, within ten (10) days after the close of each month during the shooting season, and the licensee shall retain a legible copy of such records. Such records shall be open to inspection at the area headquarters on shooting days, at the club headquarters or in the possession of the licensee or his agent during the balance of the shooting season, and at a location specified by the licensee for one year thereafter. Such records shall be open to the inspection at any time during these periods by authorized representatives of the department.

(i) **Seals on Birds Killed.**

(1) Seals, as required by Section 3309 of the Fish and Game Code, shall be affixed by the licensee or his agent to all domesticated migratory game birds taken on the licensed area before such birds are removed from the licensed area. Unused seals shall not be given to shooters. These seals shall be of a type approved by the Fish and Game Commission and shall be purchased at a cost of five cents (\$0.05) each prior to the taking of any domesticated migratory game birds on the license area.

(2) All seals must be accounted for by the licensee whenever requested by the department, and at the end of the domesticated migratory game bird shooting area season unused seals shall be returned to the department with the final report. There shall be a refund of money for all returned unused seals.

(3) Seals are not transferable and shall be used only on the licensed domesticated migratory game bird shooting area for which issued.

(j) **Posting of Laws and Regulations.** Each licensee shall post a complete copy of the licensed migratory game bird shooting area laws and regulations in the area headquarters where they may be read by any person using the facilities of the area. An appropriate copy of the laws and regulations will be furnished to each licensee by the department.

(k) **Special Licensing Provisions.** Licenses to operate domesticated migratory game bird shooting areas may also be issued under the following conditions:

(1) There is no minimum number of birds which must be released during the license year. (This supersedes Section 3304 of the Fish and Game Code.)

(2) There are no restrictions on licensees regarding shooting from blinds or over water and no minimum shooting distance from the release point, provided all birds are released prior to the regular waterfowl hunting season. (This supersedes Section 3306 of the Fish and Game Code.)

(3) Licensees are not required to provide a retrieving dog for all shooters. (This supersedes Section 3307 of the Fish and Game Code.)

(4) The season for waterfowl hunting on areas licensed under this subsection shall be concurrent with the general waterfowl season in effect at the location of said areas.

(5) The total duck limit on areas licensed under this subsection shall be the same as the bag and possession limit established in Section 502, Title 14, CAC. If the limit in Section 502 includes restrictions on mallards, hunters under this program may not take more wild mallards than allowed. Licensed hunters may, however, take up to the total duck limit of properly marked domestic mallards of either sex, but in no case shall the combination of domestic mallards and wild birds of any species exceed the total duck limit established in Section 502.

(6) Licenses may only be issued for areas in the following counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.

(7) All other provisions of Section 3300-3311 of the Fish and Game Code and Section 600.4 of this title shall remain in effect.

NOTE: Authority cited: Sections 800, 802, 219, 388, 386, 3000, 3302 and 3305, Fish and Game Code. Reference: Sections 900, 208, 219, 388, 386, 3000, 3300-3311 and 3800, Fish and Game Code.

Subsection 600.4(k) provides for the release and harvest of domestic mallards which are harvested by permittees and the general public on lands outside the permitted area. To address the issue of reduced waterfowl bag limits, some waterfowl groups worked out a plan with the U.S. Fish and Wildlife Service and the Department to permit an augmentation of the authorized daily bag limit for ducks as provided in federal and state regulations. Under permits issued under Section 600.4(k) toe-clipped domestic mallards can be released and harvested on permitted clubs to increase the daily bag limit. Those released birds are also available to non-permitted individuals on adjacent lands to be harvested during the regular duck season within the reduced federal/state daily bag limit.

To bring state provisions into conformance with federal authorizations, the Commission utilized Section 219 of the Code to provide a "vehicle" to carry out this program. Section 3304, 3306 and 3307 of the Code were enacted to provide for totally different types of licensed domesticated migratory game bird shooting areas. Initially, these areas raised their ducks from ducklings and as they matured, they were "trained" to fly from one point to another. When mature, the hunters then harvested the ducks as they made these flights. Generally, the ducks were not made available to adjacent hunters and were all harvested on the permitted club.

Since the "augmentation" approach to releasing these domesticated mallards does not restrict lawful harvest to the permitted clubs, the limitations in sections 3304, 3306 and 3307 were not necessary. Further the Commission could have lawfully provided for such release and harvest pursuant to sections 355 and 356 of the Code, without the need to utilize Section 219 of the code. The Commission chose to use Section 600.4 as the method to implement the federally authorized augmented daily bag limit, rather than set up a completely new permitting system. Therefore, it had to provide for consistency in enforcement between the original release program and the augmented daily bag limit provisions.

For reference, sections 355, 356, 3304, 3306 and 3307 of the Code provide:

Section 355. Regulations; migratory birds.

The commission may, annually, promulgate regulations pertaining to migratory birds to conform with or to further restrict the rules and regulations prescribed pursuant to the Migratory Bird Treaty Act.

Regulations adopted under this section are not subject to Sections 11346.1, 11346.2, 11346.4, and 11346.8 of the Government Code.

Every regulation of the commission made pursuant to this article shall be filed with the Secretary of State and shall become effective upon filing unless otherwise specified in the regulations.

Section 356. Federal law and regulations pertaining to migratory game birds.

Migratory game birds may be taken in conformity with the federal laws and regulations and the regulations of the commission as provided in Section 355.

In the event no regulations are prescribed by the proper federal agency, the commission may determine and fix the area or areas, the seasons and hours, the species, the bag and possession limits, and the total number that may be taken during any open season for the taking of migratory game birds, under such rules and regulations as the commission may prescribe. Such rules and regulations as the commission may prescribe shall have the same effect as if enacted by the Legislature.

Section 3304. Minimum amount of birds.

The licensee shall raise or use a minimum of 500 birds during the annual license period.

Section 3306. Limitations on shooting.

Shooting shall be confined to blinds, except for shooting necessary to recover a downed and injured bird, and not more than three shooters shall occupy or use each blind. Such blinds shall be constructed to prevent the shooting of domestic migratory game birds over water and to insure maximum safety to occupants of adjoining blinds.

The blinds shall be so situated that the occupants of the blinds cannot see the release site.

The licensee shall not permit any shooting within 500 feet of a point where the birds are released, nor shall any birds be taken within such distance from the point of release.

Section 3307. Retrieval of killed or injured birds.

All birds killed or injured by shooters shall be retrieved without delay, and all injured birds shall be humanely dispatched. The licensee shall not permit injured birds to remain on a pond or feeding area, nor shall he knowingly permit such birds to be used in any subsequent release.

In order to prevent the loss of any dead or injured birds, the licensee shall provide the use of a retrieving dog, without cost, to all shooters, except that shooters may provide their own retrieving dogs. The licensee shall not permit the shooting of any birds unless a retrieving dog is immediately available for use by all shooters.

Recommendation:

It is suggested that Section 3307.5 be added to the Code to provide:

Section 3307.5 Notwithstanding sections 3304, 3306 and 3307, the commission, by regulation, may authorize the releasing and shooting of domesticated migratory game birds pursuant to the terms and conditions of a permit issued by the Department to provide for an augmented daily bag and possession limit for migratory game birds when authorized by and consistent with federal migratory waterfowl regulations.

Recommendation on Section 219, Fish and Game Code:

It is further recommended that Section 219 of the Code be retained, but amended to read:

Section 219. Superseding of code sections by regulations.

Any regulation made pursuant to this article may supersede any section of this code designated by number in the regulation, but shall do so only to the extent specifically provided in the regulation. The commission shall notify the Legislature within ten calendar days from the date of submission to the office of Administrative Law of any regulations adopted pursuant to this section. Any such regulations shall be effective for only 180 days if the Legislature is not in joint recess during such 180-day period, or shall remain in effect only until 180 days after the end of the joint recess if the Legislature is in joint recess during such period.

If you have any questions, please let me know.

Harold C. Cribbs

cc: Director Bontadelli
Vern Goehring, Legislative Coordinator