

Memorandum 2017-16

Fish and Game Law: Plants

In this study, the Commission¹ is developing a proposed recodification of the Fish and Game Code. As part of that process, the staff is currently putting the finishing touches on a draft tentative recommendation that will contain the following components of a proposed Fish and Wildlife Code:

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Native American Tribes [Reserved]
- Division 6. Hunting, Trapping, and Fishing Generally
- Division 7. Wildlife Propagation, Domestication, and Possession
- Division 8. Birds
- Division 9. Mammals
- Division 10. Fish
- Division 11. Invertebrates
- Division 12. Amphibians
- Division 13. Reptiles

This memorandum begins the staff's review of the remainder of the Fish and Game Code. It presents a preliminary staff draft of a proposed "Division 14. Plants."

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

GENERAL APPROACH

The staff has taken a fairly conservative approach in preparing the attached draft. For the most part, the language used in the draft is drawn from existing

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.

law verbatim. In some cases, the staff has significantly restated an existing section that is awkwardly phrased or difficult to understand. Such restatements are followed by a Staff Note that sets out the existing language of the restated provision and asks for public comment on whether the restatement would cause any problems.

Consistent with the Legislature’s direction in this study, the attached draft is not intended to include any significant substantive changes in the effect of the law.² In addition, the Commission has adopted a generally conservative approach to technical recodification projects of this type. It will only make a change to existing law if the change would meet all three of the following criteria:

- (1) It is plainly beneficial.
- (2) It does not present a significant risk of unintended consequences (i.e., its effects seem straightforward and circumscribed).
- (3) It is not likely to be controversial.³

Those limitations still leave plenty of room for nonsubstantive improvement to the organization and expression of existing law (e.g., grouping related provisions, breaking up overlong sections, restating language that is difficult to understand, eliminating redundant and obsolete language, imposing standard statutory style conventions).

As noted above, there are “Staff Notes” following some provisions of the proposed law. Some of the Staff Notes identify issues that may require future attention. Others solicit public comment in response to specific questions. Staff Notes are intended to be temporary and will not be included in any final recommendation.

CONTENT

The proposed new “Division 14. Plants” would serve a similar purpose to proposed Divisions 8-13. It would provide a place for the aggregation of provisions that govern a particular broad class of organisms (in this case, plants).

The provisions in the attached draft only regulate plants. Provisions that regulate both plants and animals will be located elsewhere. For example, the

2. See 2016 Cal. Stat. ch. res. 150.

3. Minutes (Sept. 2016), p. 6.

attached draft does not include provisions that regulate the take or propagation of both plants and animals. Such provisions will be located in the tentative recommendation that is currently being prepared.⁴ Nor does the attached draft include provisions that establish protections for entire communities of plants and animals, such as the Oak Woodlands Conservation Act⁵ and the Marine Life Protection Act.⁶ Those provisions will be addressed in a future memorandum.

In addition to reviewing the Fish and Game Code, the staff looked in other codes for provisions that regulate or protect wild plants. The most notable statute of that type is the California Desert Native Plants Act, which is located in the Food and Agricultural Code.⁷ That statute regulates the harvesting of native desert plants in several specified counties. A few provisions that refer to the California Desert Native Plant Act, but not the Act itself, are now located in the Fish and Game Code.⁸

While there is an argument for moving that Act to the proposed Fish and Wildlife Code, based on the Act's wildlife protection purpose, the staff recommends against doing so. Primary responsibility for administering the Act is assigned to the Department of Food and Agriculture. The Department of Fish and Wildlife plays only a minor role in the Act's enforcement.

For that reason, it makes sense to locate the Act in the Food and Agricultural Code, along with other statutes administered by the Department of Food and Agriculture. The existing Fish and Game Code provisions that refer to the California Desert Native Plants Act would remain in the proposed Fish and Wildlife Code.⁹

ORGANIZATION

The proposed new division would parallel the general organizational structure of the divisions proposed for birds, mammals, fish, invertebrates, amphibians, and reptiles. It would be divided into the following parts:

- Part 1. General Provisions
- Part 2. Disease Control
- Part 3. Classes of Plants

4. See, e.g., existing Sections 15000 *et seq.* (aquaculture).
5. Existing Sections 1360-1372.
6. Existing Sections 2850-2863.
7. Food & Agric. Code § 80001 *et seq.*
8. See existing Sections 1925-1926.
9. See proposed Sections 53900-53910 *infra.*

Part 4. Specific Types of Plants

As occasionally happens, we found a definition that currently has limited application, but should perhaps be generalized (the definition of “native plant”).¹⁰ The attached draft proposes to locate that provision in Division 1, where it would apply to the entire proposed code.¹¹ A staff note following that section asks for comment on whether generalizing the definition would cause any problems.

CONCLUSION

Because the tentative recommendation has not yet been completed, it would be possible to include the attached draft in the tentative recommendation (with or without changes). **The staff recommends doing so.** The attached draft has much in common, in terms of content and organization, with proposed Divisions 8 through 13, which will be included in the tentative recommendation. It would make sense to review proposed Division 14 in conjunction with those other divisions.

As always, the staff invites public comment on the content of the attached draft. Are there any other provisions, in the Fish and Game Code or in any other code, that should be located in the attached draft? The staff would also appreciate receiving comment on whether any of the provisions included in the draft present the kinds of problems with consistency, redundancy, or ambiguity as to program authority or funding sources that the Commission has been tasked with addressing.¹²

Respectfully submitted,

Brian Hebert
Executive Director

10. See existing Section 1901.

11. See proposed Section 558.

12. See 2012 Cal. Stat. res. ch. 108.

FISH AND WILDLIFE CODE

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

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

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

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

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

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

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

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

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DISPOSITION OF FORMER LAW17

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DIVISION 1. GENERAL PROVISIONS

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PART 2. DEFINITIONS

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§ 558. “Native plant”

558. “Native plant” means a plant growing in a wild uncultivated state, which is normally found native to the plantlife of this state.

Comment. Section 558 generalizes the second sentence of former Fish and Game Code Section 1901.

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Staff Note. Proposed Section 558 would generalize the definition of “native plant,” which currently only applies to Sections 1900-1913. Provisions that currently use the term “native plant” without definition include Sections 1580, 1755, 1756, 1760-1763, 1771, 1801, 1925, 2781, 4180, 10667, and 13014. **The staff invites comment on whether applying the definition to such provisions would cause any problems.**

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DIVISION 14. PLANTS

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PART 1. GENERAL PROVISIONS

17

§ 53500. Governance by other provisions

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53500. Plants governed by this division are also governed by other provisions of this code, including but not limited to **Division 12 (commencing with Section 15000)**.

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Comment. Section 53500 is new. It makes clear that this division does not contain the only provisions of the code governing plants, and that plants governed by this division are also governed by other law.

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PART 2. DISEASE CONTROL

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TITLE 1. AQUATIC PLANTS

26

§ 53600. Application of title

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53600. This title does not apply to activities governed by **Division 12 (commencing with Section 15000)**.

28

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Comment. Section 53600 continues the second sentence of former Fish and Game Code Section 6300, without substantive change. The first sentence of Section 6300 is not continued because it does not apply to plants.

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1 **§ 53605. Inspection**

2 53605. The department may enter at any time any vehicle, container, warehouse,
3 depot, ship, or growing area where any aquatic plants are held, transported, or
4 stored, for the purpose of making a regulatory inspection to ascertain whether
5 those aquatic plants are infected, diseased, or parasitized, or to determine if
6 aquaculture products are being or have been legally imported, transported, or
7 possessed.

8 **Comment.** Section 53605 continues the part of former Fish and Game Code Section 6301
9 applicable to plants, without substantive change.

10 **§ 53610. Public nuisance**

11 53610. Except as otherwise provided in **Division 12 (commencing with Section**
12 **15000)**, all aquatic plants found to be infected, diseased, or parasitized are a public
13 nuisance and shall be summarily destroyed by the department.

14 **Comment.** Section 53610 continues the part of former Fish and Game Code Section 6302
15 applicable to plants, without substantive change.

16 **§ 53615. Deleterious plants**

17 53615. All aquatic plants that the department determines are merely deleterious
18 to fish, amphibia, aquatic plants, or aquatic animal life, shall be destroyed by the
19 department, unless the owner or person in charge of the aquatic plants ships them
20 out of the State within a period of time to be specified by the department.

21 **Comment.** Section 53615 continues the part of former Fish and Game Code Section 6303
22 applicable to plants, without substantive change.

23 **§ 53620. Notices**

24 53620. (a) If the department finds any infected, diseased, or parasitized aquatic
25 plants within this state, the department shall post notices describing, as nearly as
26 possible, the boundaries of the area within which the aquatic plants are found, and
27 shall state the period during which the taking, carrying, and transportation of the
28 aquatic plants from the area shall be unlawful.

29 (b) The fact of posting the notices shall be published once a week for four
30 successive weeks in some newspaper of general circulation in the county in which
31 the infected area is situated, and, if there is no newspaper of general circulation in
32 that county, then in a newspaper of general circulation published in an adjoining
33 county.

34 **Comment.** Section 53620 continues the part of former Fish and Game Code Section 6304
35 applicable to plants, without substantive change.

36 **§ 53625. Transportation within state**

37 53625. It is unlawful to carry or cause to be carried from one point in this state
38 which has been posted according to the provisions of this title, to any other point
39 in this state, any infected, diseased, or parasitized aquatic plant.

1 **§ 53815. Notice to affected land owner**

2 53815. To the extent that the location of endangered or rare native plants is
3 known, the department shall notify the owners of affected land that an endangered
4 or rare native plant is growing on that land and shall provide any information
5 about the protection of the plants that may be appropriate.

6 **Comment.** Section 53815 continues the second sentence of former Fish and Game Code
7 Section 1904 without substantive change.

8 **§ 53820. Prohibited activities**

9 53820. No person shall import into this state, or take, possess, or sell within this
10 state, except as incident to the possession or sale of the real property on which the
11 plant is growing, any native plant, or any part or product thereof, that the
12 commission determines to be an endangered native plant or rare native plant,
13 except as otherwise provided in this title.

14 **Comment.** Section 53820 continues former Fish and Game Code Section 1908 without
15 substantive change.

16 **§ 53825. Regulation**

17 53825. (a) The commission may adopt regulations governing the taking,
18 possession, propagation, transportation, exportation, importation, or sale of any
19 endangered or rare native plants. The regulations may include, but shall not be
20 limited to, requirements for persons who perform any of the foregoing activities to
21 maintain written records and to obtain permits that may be issued by the
22 department.

23 (b) Persons engaged in the production, storage, sale, delivery, or transportation
24 of nursery stock pursuant to the provisions of Part 3 (commencing with Section
25 6701) of Division 4 of the Food and Agricultural Code shall not be required to
26 obtain a permit pursuant to this chapter unless those activities involve the
27 collection of rare or endangered plants or parts or products thereof, growing in a
28 wild, uncultivated state.

29 (c) Persons who purchase nursery grown stock shall not be required to obtain a
30 permit pursuant to this title.

31 **Comment.** Section 53825 continues former Fish and Game Code Section 1907 without
32 substantive change.

33 **§ 53830. Enforcement authority**

34 53830. (a) When any power or authority is given by any provision of this title to
35 any person, it may be exercised by any deputy, inspector, or agent duly authorized
36 by that person.

37 (b) Any person in whom the enforcement of any provision of this title is vested
38 has the power of a peace officer as to the enforcement this title. This subdivision
39 applies to any state or federal agencies, the State of Nevada, the State of Oregon,

1 or the State of Arizona, with which cooperative agreements have been made by the
2 department to enforce any provisions of this title.

3 **Comment.** Section 53830 restates former Fish and Game Code Section 1909 without
4 substantive change.

5 **Staff Note.** Proposed Section 53830(b) would restate the second sentence of existing
6 Section 6656 to improve its clarity, without changing its substantive effect. The existing
7 provision reads as follows:

8 “Any person in whom the enforcement of any provision of this chapter is vested has the power of
9 a peace officer as to such enforcement, which shall include state and federal agencies, and the
10 State of Nevada, State of Oregon, or State of Arizona with which cooperative agreements have
11 been made by the department to enforce any provisions of this chapter.”

12 **The staff invites comment on whether that restatement would cause any problems.**

13 **§ 53835. Arrest**

14 53835. A peace officer or an employee or agent of the department may, in the
15 enforcement of this title, make arrests without warrant for a violation of this title
16 that the officer, employee, or agent may witness, and may confiscate plants or
17 parts of plants when unlawfully taken, transported, possessed, sold, or otherwise,
18 in violation of this title.

19 **Comment.** Section 53835 continues the first sentence of former Fish and Game Code Section
20 1910 without substantive change.

21 **§ 53840. Application of Penal Code Section 384a**

22 53840. The provisions of this title are in addition to the provisions of Section
23 384a of the Penal Code.

24 **Comment.** Section 53840 continues the second sentence of former Fish and Game Code
25 Section 1910 without substantive change.

26 **§ 53845. State agency programs**

27 53845. All state departments and agencies shall, in consultation with the
28 department, utilize their authority in furtherance of the purposes of this title by
29 carrying out programs for the conservation of endangered or rare native plants.
30 Those programs include, but are not limited to, the identification, delineation, and
31 protection of habitat critical to the continued survival of endangered or rare native
32 plants.

33 **Comment.** Section 53845 continues former Fish and Game Code Section 1911 without
34 substantive change.

35 **§ 53850. Department activities**

36 53850. (a) The department may undertake botanical research and field
37 investigations and may collect and diffuse any statistics and information that
38 pertain to the conservation, protection, and perpetuation of native plants.

1 (b) Nothing in this code or any other law shall prohibit the department from
2 taking, for scientific or propagation purposes, any species of native plants. The
3 department may import, propagate, and distribute native plants.

4 **Comment.** Subdivision (a) of Section 53850 continues former Fish and Game Code Section
5 1905 without substantive change.

6 Subdivision (b) continues former Fish and Game Code Section 1906 without substantive
7 change.

8 **§ 53855. Exemptions**

9 53855. (a) The provisions of this title shall not be applicable to emergency work
10 necessary to protect life or property. However, the person or agency performing
11 the emergency work shall notify the department within 14 days of the
12 commencement of the work.

13 (b) The provisions of this title are not intended and shall not be construed as
14 authorizing any public agency to mandate, prescribe, or otherwise regulate
15 agricultural operations or management practices, including the clearing of land for
16 agricultural practices or fire control measures.

17 (c) Notwithstanding the provisions of Section 53845, timber operations in
18 accordance with a timber harvesting plan submitted pursuant to the provisions of
19 the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511
20 of the Public Resources Code), or required mining assessment work pursuant to
21 federal or state mining laws, or the removal of endangered or rare native plants
22 from a canal, lateral ditch, building site, or road, or other right-of-way by the
23 owner of the land or the owner's agent, or the performance by a public agency or a
24 publicly or privately owned public utility of its obligation to provide service to the
25 public, shall not be restricted by this title because of the presence of rare or
26 endangered plants, except as provided in subdivision (d).

27 (d) Notwithstanding the provisions of subdivisions (b) and (c), where the owner
28 of land has been notified by the department pursuant to Section 53815 that a rare
29 or endangered native plant is growing on the owner's land, the owner shall notify
30 the department at least 10 days in advance of changing the land use to allow for
31 salvage of the plant. The failure by the department to salvage the plant within 10
32 days of notification shall entitle the owner of the land to proceed without regard to
33 this title. Submission of a timber harvesting plan pursuant to the Z'berg-Nejedly
34 Forest Practice Act of 1973 (commencing with Section 4511 of the Public
35 Resources Code) shall constitute notice under this section. Converting from one
36 type of agricultural use, as defined in Section 51201 of the Government Code, to
37 another type of agricultural use shall not constitute a change in land use.

38 **Comment.** Subdivision (a) of Section 53855 continues former Fish and Game Code Section
39 1912 without substantive change.

40 Subdivision (b) continues former Fish and Game Code Section 1913(a) without substantive
41 change.

42 Subdivision (c) continues former Fish and Game Code Section 1913(b) without substantive
43 change.

1 Subdivision (d) continues former Fish and Game Code Section 1913(c) without substantive
2 change.

3 **☞ Staff Note.** Existing Section 1913(c) refers to landowner notice given pursuant to Section
4 1903.5. That section does not exist. In proposed Section 53855(d), the reference has been revised
5 to refer to proposed Section 53815, which continues the second sentence of existing Section
6 1904. That provision requires notice to landowners when rare or endangered native plants are
7 found on their land. **The staff invites comment on whether that is the correct resolution of the**
8 **erroneous cross-reference.**

9 TITLE 2. CALIFORNIA DESERT
10 NATIVE PLANTS

11 **§ 53900. Department enforcement of Act**

12 53900. The department shall enforce the provisions of the California Desert
13 Native Plants Act, Division 23 (commencing with Section 80001) of the Food and
14 Agricultural Code, except that permits, tags, seals, and wood receipts shall be
15 issued pursuant to Chapter 4 (commencing with Section 80101) of Division 23 of
16 the Food and Agricultural Code, by the county agricultural commissioner or the
17 sheriff.

18 **Comment.** Section 53900 continues the first sentence of former Fish and Game Code Section
19 1925 without substantive change.

20 **§ 53905. Cooperation with Department of Food and Agriculture**

21 53905. In carrying out the provisions of this title, the department shall cooperate
22 fully with the Department of Food and Agriculture.

23 **Comment.** Section 53905 continues former Fish and Game Code Section 1926 without
24 substantive change.

25 **§ 53910. Effect of Act on department activities**

26 53910. Nothing in the California Desert Native Plants Act, or any other law,
27 prohibits the department from taking, for scientific or propagation purposes, any
28 species of native plants. The department may import, propagate, and distribute
29 native plants, and the California Desert Native Plants Act does not apply to those
30 activities.

31 **Comment.** Section 53910 continues the second sentence of former Fish and Game Code
32 Section 1925 without substantive change.

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PART 4. SPECIFIC TYPES OF PLANTS

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TITLE 1. KELP AND OTHER AQUATIC PLANTS

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CHAPTER 1. GENERAL PROVISIONS

4

§ 54000. Provisions not exclusive

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54000. The provisions of this title are not intended to be exclusive. Other provisions may govern kelp and other aquatic plants.

6

Comment. Section 54000 is new.

7

§ 54005. Commission rulemaking

8

54005. The commission may make any regulations that may be necessary to insure the proper harvesting of kelp and other aquatic plants.

9

Comment. Section 54005 continues former Fish and Game Code Section 6653 without substantive change.

10

§ 54010. Application of title

11

54010. This title does not apply to aquatic plants grown on private land or on state water bottoms leased pursuant to **Division 12 (commencing with Section 15000)**.

12

Comment. Section 54010 continues former Fish and Game Code Section 6651(c) without substantive change.

13

CHAPTER 2. COMMERCIAL PROVISIONS

14

Article 1. Kelp Harvest License

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§ 54025. License requirement

16

54025. Every person engaged in harvesting kelp or other aquatic plants for profit in the waters of this state shall have a license for that purpose.

17

Comment. Section 54025 continues former Fish and Game Code Section 6650 without substantive change.

18

§ 54030. Issuance of license

19

54030. (a) A license granting the privilege to harvest kelp or other aquatic plants shall be issued upon application and the payment of a fee of one hundred dollars (\$100) to the department. The license shall be valid from January 1 to December 31, inclusive, or, if issued after the beginning of that term, for the remainder of that term.

20

(b) The commission shall adjust the amount of the fees specified in subdivision (a), as necessary, to fully recover, but not exceed, all reasonable administrative

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1 and implementation costs of the department and the commission relating to those
2 licenses.

3 **Comment.** Section 54030 continues former Fish and Game Code Section 6651(a)-(b) without
4 substantive change.

5 **§ 54035. License revocation or nonrenewal**

6 54035. (a) The commission may revoke a license and prohibit its reissuance for
7 a period of not more than one year, in either of the following circumstances:

8 (1) The licensee harvested kelp from a bed that was closed, after the department
9 served notice of the closure on the licensee and before the bed was reopened.

10 (2) The licensee violated any law or regulation of the commission relating to
11 kelp.

12 (b) A proceeding pursuant to this section shall be conducted at one of the
13 commission's regularly scheduled meetings.

14 **Comment.** Section 54035 restates former Fish and Game Code Section 6656 without
15 substantive change.

16 **Staff Notes. (1)** Proposed Section 54035 would restate existing Section 6656 to improve its
17 clarity, without changing its substantive effect. The existing provision reads as follows:

18 "The commission may revoke and prohibit reissuance for a period of not more than one year,
19 the license of:

20 (a) Any person who harvests any kelp from a bed which is closed, between the time of service
21 of notice upon him or her of the closing of the bed and the decision of the commission upon a
22 hearing as to the necessity for the closing.

23 (b) Any person who violates any law or regulation of the commission relating to kelp.
24 The proceedings shall be conducted at one of the commission's regularly scheduled meetings."

25 **The staff invites comment on whether that restatement would cause any substantive change**
26 **in the meaning of the provision.**

27 (2) Existing Section 6656(a) provides a sanction for a person who harvests kelp from a bed that is
28 closed, after notice of the closure and before "the decision of the commission upon a hearing as to
29 the necessity for the closing." The latter language refers to one way in which a bed closure can
30 end — if the commission decides, after an evidentiary hearing, that the closure is not necessary.
31 See existing Section 6655. However, that is not the only way that a closure can end. If there is no
32 hearing, or the commission affirms the closure, it will end automatically at the time specified in
33 the closure order (which is not to exceed a period of one year). See existing Section 6654.
34 Proposed Section 54035(a)(1) is phrased to be compatible with both possible endings. **The staff**
35 **invites comment on whether that revision would cause any problems.**

36 **§ 54040. Scientific and educational permits**

37 54040. The commission may, subject to any regulations that it deems proper,
38 grant permits to any department of the United States Government or to any
39 scientific or any educational institution, to harvest kelp at any time for scientific or
40 experimental purposes without the payment of the kelp license or royalty imposed
41 by this title.

42 **Comment.** Section 54040 continues former Fish and Game Code Section 6657 without
43 substantive change.

1 **☞ Staff Note.** Existing Section refers to a “privilege tax imposed by this chapter.” There is no
2 other provision of the chapter that uses the term “privilege tax.” It seems likely that the term is
3 meant to refer to the “royalties” imposed by existing Section 6680 (proposed Section 54050).
4 That would be consistent with the use of the term “privilege tax” to refer to weight-based fees
5 imposed on a commercial fisherman when landing fish. See existing Section 8040(b). To avoid
6 any confusion, proposed Section 54040 would replace the term “privilege tax” with “royalty.”

7 **The staff invites comment on whether that substitution would cause any problems.**

8 Article 2. Kelp Harvest Royalties

9 § 54050. Royalty

10 54050. (a) In addition to the license fee provided for in this chapter, every
11 person harvesting kelp or other aquatic plants shall pay a royalty, as the
12 commission may prescribe, of not less than five cents (\$0.05) per ton of wet kelp
13 or wet aquatic plants harvested.

14 (b) Any revenues derived from those royalties shall not be available for
15 expenditures until appropriated.

16 **Comment.** Section 54050 continues former Fish and Game Code Section 6680 without
17 substantive change.

18 § 54055. Weight records

19 54055. (a) Every person engaged in harvesting kelp shall determine the weight
20 of all wet kelp, immediately after it is delivered to the licensee’s place of business
21 or elsewhere. The weight shall be entered in a book to be kept by the licensee. The
22 book shall be open at all times to the inspection of the department.

23 (b) The weight shall be determined by any method approved by the department,
24 including the displacement method.

25 (c) Every person engaged in harvesting kelp shall, on or before 10 days after
26 each month of the term of the license, deliver to the department a statement of the
27 weight of all wet kelp harvested during the preceding month.

28 **Comment.** Section 54055 restates former Fish and Game Code Section 6652 without
29 substantive change.

30 **☞ Staff Notes. (1)** Proposed Section 54055(a)-(b) would restate the first paragraph of existing
31 Section 6652 to improve its clarity, without changing its substantive effect. The restated
32 paragraph reads as follows:

33 “Every person engaged in harvesting kelp shall determine the weight by any method, including
34 the displacement method, approved by the department of all wet kelp immediately after it is
35 delivered to the licensee’s place of business or elsewhere, and the weight shall be entered in a
36 book to be kept by the licensee. The book shall be open at all times to the inspection of the
37 department.”

38 **The staff invites comment on whether that restatement would cause any substantive change**
39 **in the meaning of the provision.**

40 **(2)** The second paragraph of existing Section 6652 requires that a commercial kelp harvester
41 “render a statement” each month, without specifying where the statement must be “rendered.” A

1 Fish and Game Commission regulation addresses that point, requiring that a kelp landing record
2 be “delivered to the department.” 14 Cal. Code Regs. § 165(b)(3)(G). In the interests of clarity,
3 proposed Section 54055(c) would codify that element of the regulation, replacing “render” with
4 “deliver to the department.” **The staff invites comment on whether that revision would cause**
5 **any problems.**

6 Article 3. Kelp Bed Leases

7 § 54075. Description and regulation of kelp beds

8 54075. The commission shall describe the kelp beds of the state and adopt
9 regulations for the leasing of the beds.

10 **Comment.** Section 54075 continues the second sentence of former Fish and Game Code
11 Section 6700 without substantive change.

12 § 54080. Exclusive lease of kelp bed

13 54080. The commission may lease to any person the exclusive privilege to
14 harvest kelp in any designated kelp bed, or part thereof, if the commission
15 determines that the lease is in the public interest.

16 **Comment.** Section 54080 continues the first sentence of former Fish and Game Code Section
17 6700 without substantive change.

18 § 54085. Application

19 54085. A person wishing to lease the exclusive privilege to harvest kelp shall
20 submit a written application to the commission. The application shall include all of
21 the following, and any other information that the commission may prescribe:

22 (a) The number of the kelp bed or beds to be leased.

23 (b) The designated number of square miles in each bed.

24 **Comment.** Section 54085 continues former Fish and Game Code Section 6701 without
25 substantive change.

26 § 54090. Deposit

27 54090. A deposit of not less than forty dollars (\$40) for each square mile, or
28 fraction thereof, of the total area of the kelp bed or beds which are designated in
29 the application shall be submitted with the application. The deposit shall be
30 refunded to the person making the application unless a lease is executed.

31 **Comment.** Section 54090 continues former Fish and Game Code Section 6701.5 without
32 substantive change.

33 § 54095. Commission action on application

34 54095. (a) If the commission finds that the kelp beds included in the application
35 are available for lease and that the lease would be in the public interest, the
36 commission shall publish a notice that the area is being considered for leasing.

37 (b) The commission shall have legal notices published in a newspaper of general
38 circulation in each county where the kelp bed, or any part thereof, is located,

1 describing the area to be leased and the type of operation to be conducted. Except
2 as provided in this subdivision, the publication shall be made pursuant to Section
3 6066 of the Government Code.

4 (c) If the commission receives more than one application for the lease of a kelp
5 bed or beds, it shall advertise for bids on the area being considered for leasing.
6 The commission shall award the lease of that area to the highest qualified bidder.

7 **Comment.** Section 54095 continues former Fish and Game Code Section 6702 without
8 substantive change.

9 **§ 54100. Terms of lease**

10 54100. (a) The initial term of a lease for the exclusive privilege of harvesting
11 kelp shall not exceed 20 years.

12 (b) No lessee shall have an exclusive lease, excluding subleases, to an area in
13 excess of 25 square miles or 50 percent of the total area of the kelp resource as
14 shown on the maps of the resource prepared by the commission, whichever is
15 greater.

16 **Comment.** Section 54100 continues former Fish and Game Code Section 6703 without
17 substantive change.

18 **§ 54105. Renewal**

19 54105. (a) Each kelp bed lease entered into or renewed, on and after January 1,
20 1985, shall specify a period prior to expiration when renewal of the lease may be
21 requested by the lessee. If the commission determines that the lessee has complied
22 with the terms of the lease, the lessee shall have a prior right to renew the lease on
23 terms agreed upon between the commission and the lessee.

24 (b) If terms for a renewal of the lease are not agreed upon, or the commission
25 determines that the lessee has not complied with the terms of the lease, the
26 commission shall advertise for bids on the individual kelp beds comprising the
27 lease.

28 (c) If a request for renewal is not made during the specified period by the lessee,
29 the commission shall advertise for bids on the individual kelp beds comprising the
30 lease.

31 (d) The duration of the term of any renewal of a lease shall not exceed 20 years.

32 **Comment.** Section 54105 continues former Fish and Game Code Section 6704 without
33 substantive change.

34 **Staff Note.** Given that the maximum term of a kelp bed lease is 20 years, the staff invites
35 comment on whether the reference, in existing Section 6704, to a lease “entered into or renewed,
36 on and after January 1, 1985” is obsolete. **Could the quoted phrase be deleted without**
37 **substantive effect?**

1 § 54110. Renewal of leases in effect on specified dates

2 54110. (a) Notwithstanding Section 54105, with respect to any kelp bed lease in
3 effect on January 1, 1983, the lessee shall have a prior right to renew the lease on
4 terms agreed upon between the commission and the lessee.

5 (b) If the lessee does not renew the lease, or if terms are not agreed upon, the
6 commission shall advertise for bids on the individual kelp beds comprising the
7 lease.

8 (c) The term of any renewal of a lease shall not exceed 20 years.

9 (d) Any lease in effect on January 1, 1985, may be performed pursuant to its
10 terms, notwithstanding this article, but any renewal of that lease is subject to this
11 article.

12 **Comment.** Section 54110 continues former Fish and Game Code Section 6705 without
13 substantive change.

14  **Staff Note.** Existing Section 6705 provides special rules for kelp bed leases that were in
15 effect in 1983 and 1985. Considering that kelp bed leases are limited to 20-year terms, it is not
16 clear that any such leases continue to exist. On the other hand, if renewal is considered to be an
17 *extension* of a lease, rather than *replacement* of a lease, it is possible that leases in effect in 1983
18 and 1985 still exist. **The staff invites comment on whether Section 6705 is obsolete or**
19 **continues to serve a purpose.**

20 § 54115. Renegotiated terms

21 54115. Notwithstanding Sections 54100 and 54105, at any time during the term
22 of a lease, the commission and the lessee may negotiate and enter into a new lease
23 on terms agreed upon between the two parties, if the commission determines that a
24 new lease would be in the best interest of the state. The initial term of the new
25 lease shall not exceed 20 years.

26 **Comment.** Section 54115 continues former Fish and Game Code Section 6706 without
27 substantive change.

28 § 54120. Royalty payment

29 54120. Each lease entered into, or renewed, on or after January 1, 1985, shall
30 require, in addition to the license fee required by this chapter, a payment by the
31 lessee or any sublessee of not less than the minimum royalty established under
32 Article 2 (commencing with Section 54050), for all kelp harvested from the lease
33 area, and shall provide for an annual advance payment of not less than forty
34 dollars (\$40) per square mile per year for the kelp bed leased, to be credited
35 against the amount payable by the lessee, or sublessee, as the case may be, for
36 each ton of kelp harvested during the ensuing year. The lease shall, in addition,
37 include provisions for forfeiture of the lease if the annual payment is not made in
38 advance.

39 **Comment.** Section 54120 continues former Fish and Game Code Section 6707 without
40 substantive change.

1 **☞ Staff Note.** Given that the maximum term of a kelp bed lease is 20 years, the staff invites
2 comment on whether the reference, in existing Section 6707, to a lease “entered into or renewed,
3 on and after January 1, 1985” is obsolete. **Could the quoted phrase be deleted without**
4 **substantive effect?**

5 **§ 54125. Assignment**

6 54125. (a) A lease may not be assigned, in whole or in part, by the lessee, either
7 voluntarily or by operation of law, and no subleases or other rights may be granted
8 thereunder by the lessee without the prior approval of the commission, subject to
9 the conditions that the commission prescribes.

10 (b) The lease shall be forfeited in the event of a violation of this section.

11 (c) Each lease shall contain a statement of the contents of this section.

12 **Comment.** Section 54125 continues former Fish and Game Code Section 6708 without
13 substantive change.

14 **§ 54130. DGS approval**

15 54130. A lease, or any renewal thereof, shall be submitted to, and approved by,
16 the Department of General Services.

17 **Comment.** Section 54130 continues former Fish and Game Code Section 6709 without
18 substantive change.

19 **§ 54135. Official record of lease**

20 54135. When an exclusive privilege to harvest kelp has been granted by lease by
21 the commission, the commission shall furnish a true copy thereof to the
22 department. The department shall file a notice for record in the recorder’s office of
23 the county in which the kelp bed or beds, or part thereof, are located, setting forth
24 the name of the person having the privilege, the description of the kelp bed or
25 beds, or part thereof, and the time for which the privilege has been granted. The
26 notice required to be filed for record under this section may be a copy of the
27 executed lease.

28 **Comment.** Section 54135 continues former Fish and Game Code Section 6710 without
29 substantive change.

30 **§ 54140. State Lands Commission**

31 54140. The department shall inform the State Lands Commission of all kelp bed
32 leases executed pursuant to this title, and shall furnish the State Lands
33 Commission with the information concerning these leases that it may require.

34 **Comment.** Section 54140 continues former Fish and Game Code Section 6711 without
35 substantive change.

1

Article 4. Closure of Kelp Beds

2 **§ 54175. Notice of proposed closure**

3 54175. If, at any time, the commission finds that the harvesting of kelp will tend
4 to destroy or impair any kelp bed or beds, or parts thereof, or tend to impair or
5 destroy the supply of any food for fish, the department shall serve on every person
6 licensed to harvest kelp a written notice that the kelp bed or beds, or parts thereof,
7 shall be closed to the harvesting of kelp for a period not to exceed one year.

8 **Comment.** Section 54175 continues former Fish and Game Code Section 6654 without
9 substantive change.

10 **§ 54180. Hearing**

11 54180. (a) Within 10 days after the service of a notice pursuant to Section
12 54175, the person upon whom notice is served may demand a hearing upon the
13 necessity for the closing of the kelp bed or beds, or parts thereof.

14 (b) Upon a demand for a hearing, the commission shall fix a time and place for
15 the taking of evidence upon the necessity for the closing, which time shall be not
16 less than 10 days nor more than 30 days from the date of the demand.

17 (c) The department shall serve written notice of the time and place of the hearing
18 upon the person demanding the hearing, at least 10 days before the day set for the
19 hearing.

20 (d) If no demand is made for a hearing within the time prescribed, the kelp bed
21 or beds, or parts thereof, shall remain closed to the harvesting of kelp for the time
22 specified in the order.

23 **Comment.** Section 54180 continues former Fish and Game Code Section 6655 without
24 substantive change.

25 **CHAPTER 3. NONCOMMERCIAL USE OF KELP**

26 **§ 54200. Commission regulation**

27 54200. The commission may regulate the taking, collecting, harvesting,
28 gathering, or possession of kelp for purposes other than profit.

29 **Comment.** Section 54200 continues former Fish and Game Code Section 6750 without
30 substantive change.

31 **§ 54205. Governance by other provisions**

32 54205. The provisions of Article 1 (commencing with Section 6650), Article 2
33 (commencing with Section 6680), and Article 3 (commencing with Section 6700)
34 of this chapter do not apply to the taking, collecting, harvesting, gathering, or
35 possession of kelp under this article.

36 **Comment.** Section 54205 continues former Fish and Game Code Section 6751 without
37 substantive change.

1 TITLE 2. AGAR-BEARING MARINE PLANTS

2 CHAPTER 1. GENERAL PROVISIONS

3 § 54300. Provisions not exclusive

4 54300. The provisions of this title are not intended to be exclusive. Other
5 provisions that may govern agar-bearing marine plants include, but are not limited
6 to, Section 54005.

7 **Comment.** Section 54300 is new.

8 § 54305. Application of title

9 54305. This title does not apply to aquatic plants grown on private land or on
10 state water bottoms leased pursuant to **Division 12 (commencing with Section**
11 **15000)**.

12 **Comment.** Section 54305 continues former Fish and Game Code Section 6651(c) without
13 substantive change.

14 CHAPTER 2. DRYING

15 § 54325. Permit requirement

16 54325. No person shall dry agar-bearing marine plants for profit unless the
17 person has a permit issued under this chapter.

18 **Comment.** Section 54325 continues former Fish and Game Code Section 6653.5(b) without
19 substantive change.

20 § 54330. Permit issuance

21 54330. The department may issue permits for the drying of agar-bearing marine
22 plants subject to the regulations the commission may prescribe to provide for
23 proper utilization of that resource.

24 **Comment.** Section 54330 continues former Fish and Game Code Section 6653.5(a) without
25 substantive change.

DISPOSITION OF FORMER LAW

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

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1900	53800	6651(a)-(b)	54030
1901, except 2d sent.	53805	6651(c)	54010, 54305
1901, 2d sent.	558	6652	54055
1904, 1st sent.	53810	6653	54005
1904, 2d sent.	53815	6653.5(a)	54330
1905	53850(a)	6653.5(b)	54325
1906	53850(b)	6654	54175
1907	53825	6655	54180
1908	53820	6656	54035
1909	53830	6657	54040
1910, 1st sent.	53835	6680	54050
1910, 2d sent.	53840	6700, 1st sent.	54080
1911	53845	6700, 2d sent.	54075
1912	53855(a)	6701	54085
1913(a)	53855(b)	6701.5	54090
1913(b)	53855(c)	6702	54095
1913(c)	53855(d)	6703	54100
1925, 1st sent.	53900	6704	54105
1925, 2d sent.	53910	6705	54110
1926	53905	6706	54115
6300	53600	6707	54120
6301	53605	6708	54125
6302	53610	6709	54130
6303	53615	6710	54135
6304	53620	6711	54140
6305	53625	6750	54200
6306	53630	6751	54205
6650	54025		