

Memorandum 2018-7

Fish and Game Law: Funding Analysis

In this study, the Commission¹ is developing a proposed recodification of the Fish and Game Code. In connection with that work, the Legislature directed the Commission to “clarify ... funding sources.”²

This memorandum continues the Commission’s analysis of the funding provisions in the Fish and Game Code.

Unless otherwise indicated, every statutory citation in this memorandum is to the Fish and Game Code.

Background

At its September 2017 meeting, the Commission adopted a provisional methodology for the conduct of the funding analysis.³ Key features of the methodology include:

- The analysis will be used to prepare a purely descriptive report. The report will not include any normative assessment of the adequacy of the funding scheme or any recommendations for reform.
- The analysis will be limited to the content of the Fish and Game Code. Budget bills, uncodified provisions, and administrative materials will not be included.
- The analysis will be limited to the funding and duties of the Fish and Game Commission and the Department of Fish and Wildlife. Local entities and other state agencies will not be included.
- The analysis will not include any assessment of whether specific programs “[relate] to the protection or propagation of fish and game.”⁴

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 2016 Cal. Stat. res. ch. 150.

3. See Minutes (Sept. 2017), p. 6 (attached to Memorandum 2017-47).

- The work will proceed in four stages:
 - (1) *A description of the accounts and funds established in the Fish and Game Code.* That stage has been completed. The description was attached to Memorandum 2017-45.
 - (2) *A description of revenue sources that do not have any fund or account designated for their deposit.* That stage has also been completed. The description was attached to Memorandum 2017-59.
 - (3) *A description of programs for which there is no specifically-designated revenue source.* **This stage of the work is the subject of this memorandum.**
 - (4) *All of the information compiled in the first three stages will be consolidated into an informational report.* The exact structure and formality of that report will be decided later, when all of the relevant information is in hand.

Funded Programs

The purpose of this memorandum is to prepare a list of programs for which there is no specifically-identified funding source (hereafter, “unfunded programs”).⁵ To aid in preparation of that list, the staff first compiled a list of programs for which there *is* a specifically-identified source of funding (hereafter, “funded programs”). This allowed the staff to exclude large parts of the Fish and Game Code from the search for unfunded programs.

An earlier version of the list of funded programs was attached to the First Supplement to Memorandum 2017-59. An improved version of the list is set out below, for ease of reference. The list is organized by subject matter. Each entry includes a brief description of a program, followed by a citation to the Fish and Game Code sections that provide funding for the program.

4. See Cal. Const. art. XVI, § 9 (“Money collected under any state law relating to the protection or propagation of fish and game shall be used for activities relating thereto.”). See also Sections 711(a)(1) (“The costs of nongame fish and wildlife programs shall be provided annually in the Budget Act by appropriating money from the General Fund, through nongame user fees, and sources other than the Fish and Game Preservation Fund to the department for these purposes.”) & 712 (“It is the intent of the Legislature that the Department of Finance shall not include in the Governor’s Budget any appropriation from the Fish and Game Preservation Fund for any program or project which is not expressly found to be an activity relating to the protection or propagation of fish and game, except to the extent that moneys have been deposited in that fund from collections under a law which is not related to the protection or propagation of fish and game.”).

5. The term “unfunded” is not really an apt substitute for programs that lack a specifically-designated funding source. As a general matter, every program in the Fish and Game Code that is not specifically funded is instead funded through a general fund budget appropriation. See Section 711(a)(1). See also Section 13220(b). The terms “unfunded” and “funded” are used in this memorandum only as a convenient shorthand.

In some cases, funding is specifically identified for a program that is a subordinate element of a larger funded program. In the table below, such subordinate elements are noted in footnotes.

General Administration

Fish and Game Commission Compensation.....	103, 13220(c)
Department-Managed Lands	711(a)(4), 1745(i), 1745.1
Licensing Generally	1050(f) ⁶
Law Enforcement and Legal Action Generally	860, 1615(f)(2), 2022(i), 5650.1(h)(2), 12006(b), 12006.6, 12012(g)(1) ⁷

Hunting and Fishing

Hunting and Sport Fishing Generally.....	711(a)(3) & (5) ⁸
Commercial Fishing Industry	8052 ⁹
Trout and Steelhead Conservation and Management	
Planning Act of 1979	1726.5
Anadromous Fisheries	2762, 2762.5, 2762.6
Artificial Reefs	6425
Ocean Fishery Research	6590(c)
Marine Resource Research.....	8610.9

Domestication and Importation of Wildlife

Aquaculture	15105
Regulation of Domesticated Migratory Game Bird Facilities.....	3308
Regulation of Wild Animal Importation	
and Possession.....	2125, 2150.2, 2189
Mammals Used for Hire.....	2201-2202
Aquatic Nuisance Species Response	12024

6. Funding is also specifically identified for the following subordinate element: nonprofit group advertisement on ALDS (§ 1065).

7. Funding is also specifically identified for the following subordinate elements: Wildlife Violator Compact (§ 716.8(e)), secret witness program (§ 12021(a)).

8. Funding is also specifically identified for the following subordinate elements: Black Bass management program (§ 1742), Bay-Delta sport fishing (§ 7361), upland game birds (§§ 3684, 12013.3(d)), migratory waterfowl (§§ 3701-3702), game mammals (§§ 331, 3953, 4332(e), 4334(c), 4656, 4751, 4902(c), 4903, 12013.3(c), 12013.5(b)), steelhead trout (§§ 7380-7381, 8431), abalone (§§ 7149.8, 7149.9).

9. Funding is also specifically identified for the following subordinate elements: emerging fisheries (§ 7090(f)), sea urchin grant (§ 1068), commercial salmon fishing (§§ 7861-7861.5, 8235, 8244), fish-related business licensure (§ 8032(c)), abalone (§ 8051.4), Dungeness Crab (§§ 8276.2(b)(2), 8276.4(e), 8276.5(e)-(f), 8280.1, 8280.6, 9002.5), market squid fishery (§ 8428), halibut bottom trawling (§ 8494(e)), herring (§§ 8552.7, 8558), marine aquaria pet trade (§ 8598.3).

Specific Kinds of Wildlife

Control or Eradication of Predatory Bird	3802
California Condor	3857
Grass Carp.....	6454
Abalone.....	5522(c)
Kelp Harvest Licensing	6651(a)-(b)

Wildlife and Habitat Conservation

Wildlife and Habitat Conservation Generally	711(a)(4), 711.1, 711.4, 1225, 1226(a), 1227, 1355, 1502, 1525, 1763, 1767.5, 1768, 10503(c)
Wildlife Corridor Identification.....	1930.5
Significant Natural Area Mapping.....	1932(e)
Wildlife Conservation Law of 1947	1352, 2620(a)-(b), (d) ¹⁰
Habitat Restoration and Enhancement Act.....	1655
Fish and Wildlife Habitat Enhancement Act of 1984.....	2621, 2640-2651
Wildlife and Natural Areas Conservation Program	2720, 2728
California Wildlife Protection Act of 1990.....	2786, 2796
Native Species Conservation and Enhancement.....	1767.5, 1770-1772
Shared Habitat Alliance for Recreational Enhancement Program ..	1572(c)
Enhancement and Management of Fish and Wildlife and their Habitat on Private Lands	3402(b)
California Waterfowl Habitat Program	3467
Salton Sea Restoration	2932-2932.5
Inland Wetlands Conservation Program.....	1411-1412, 1416, 1430, 1431
Wildlife Management Areas.....	1525, 1526.4, 1528, 1575, 1745
Upper Newport Bay Ecological Reserve	1586
California Endangered Species Act.....	2081.2(g), 2098, 2099.5 ¹¹

Regulation of Activities that Affect Wildlife

Natural Community Conservation Planning Act	2829
Advance Mitigation and Regional Conservation Investment Strategies	1857
Conservation and Mitigation Banking.....	711(a)(6), 1799.1 ¹²

10. Funding is also specifically identified for the following subordinate elements: Wildlife Conservation Board (§§ 1322, 1350), San Francisco Baylands Restoration Program (§ 1352.5), Oak Woodlands Conservation Act (§ 1363).

11. Funding is also specifically identified for the following subordinate elements: notice mailing costs (§ 2078), permit processing costs (§ 2081.2(b)-(d)), surface mining (§ 2081.5).

Pollution Clean-Up and Response.....	12015(c), 12016, 12017, 13230
Fishing Closure in Response to Pollution	5654(h)
California Marine Resources Legacy Act	6603, 6612(b), 6616(e), 6618
Unlawful Water Obstruction in Specified Districts	12025.1(c)
Conduits and Screens	5986, 6028
Streambed Alteration	1609
Suction Dredging	5653(d)
Cannabis Cultivation.....	12029
Management of Wildlife at Public Use Airport.....	3472.2

It is worth noting that some of the programs listed above are extremely broad. For example, the first two entries under the heading “Hunting and Fishing” appear to encompass the entirety of sport hunting, sport fishing, and the commercial fishing industry. The programs listed under “Wildlife and Habitat Conservation” cover the great majority of such programs.

Unfunded Programs

Having prepared the above list of *funded* programs, the staff analyzed the *remainder* of the Fish and Game Code to identify provisions that establish unfunded programs. Each of those unfunded programs is listed in the attached table, along with a reference to the statute that establishes the program.

In preparing the attached table, the staff made the following assumptions:

- *Private duties and prohibitions.* Provisions that impose duties and prohibitions on private citizens were not included in the attached table. While the department has general responsibility for enforcing such provisions, it has funding for its law enforcement duties.
- *Discretionary authority.* Provisions that simply grant permissive authority, without imposing mandatory duties, do not require a specific grant of funding. Discretionary authority can be exercised, or not, as resources permit. Such provisions were not included in the attached table.
- *Subordinate programs.* Some *unfunded* programs appear to be a subordinate part of a larger *funded* program. The staff assumes that these subordinate programs have access to the funding provided for the larger program to which they are related. Consequently, such provisions were not included in the attached table. For

12. Funding is also specifically identified for the following subordinate elements: Sacramento-San Joaquin Valley Wetlands Mitigation Bank (§§ 1786(b)(3)(B), 1792.5).

example, provisions that govern marine fisheries¹³ and fish hatcheries¹⁴ seem to fall within the scope of the general regulation of sport and commercial fishing. It seems likely that the funding provided for sport and commercial fishing generally would be available for those more specific fishing-related programs as well.

Some of the programs listed in the attached table may also be subordinate elements of larger funded programs. For example, provisions that govern fully protected species, native plants, and wildlife refuges may be part of the larger funded program described above as “Wildlife and Habitat Conservation Generally.” However, the staff was not certain of that relationship. Consequently, such programs are included in the attached table. **Public comment is invited on that issue.**

The staff also invites comment on the appropriateness of the assumptions described above.

CONCLUSION

The attached table is the result of a large amount of automated searching and numerous judgment calls. It is also the product of an “academic” perspective, grounded in familiarity with the statutes, but no practical experience with the operation of those statutes. Consequently, there may be issues with the attached table that are opaque to the staff but that would be easily recognized by those with more practical experience implementing or operating under the Fish and Game Code.

For that reason, the staff believes it would be sensible to request public review and comment of the materials produced to date, before preparing a final report. If the Commission agrees, the staff will prepare and distribute an informal “discussion draft” that compiles the information presented in Memorandum 2017-45, Memorandum 2017-59, and this memorandum. That draft would be distributed to the Commission’s Fish and Game mailing list, with request for public comment. Any comment received on that material would be presented to the Commission before preparing a draft report.

13. See, e.g., Sections 7050-7090 (Conservation and Management of Marine Living Resources), 7630 (Commercial Fisheries Capacity Reduction Program), 7650-7655 (Magnuson-Stevens Fishery Conservation and Management Act), 7710-7712 (fishery closure or restriction), 8100-8104 (limited entry fisheries), 8110-8114 (far offshore fishing), 8125-8126 (Commercial Fisheries Capacity Reduction Program).

14. See, e.g., Sections 1120-1126 (state fish hatcheries), 1170-1175 (private anadromous fish hatcheries), 1200-1206 (cooperative salmon and steelhead rearing facilities), 6400-6403 (fish planting).

Is that approach acceptable?

Respectfully submitted,

Brian Hebert
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Section 1008

BIOLOGICAL RESEARCH

Section 1000

SCIENCE INSTITUTE

Section 715

STRATEGIC PLANNING

Section 1020

INTER-JURISDICTIONAL COOPERATION

FEDERAL WILDLIFE-RESTORATION PROJECTS

Section 400

ANNUAL REVIEW OF ACTIVITIES ON MILITARY LANDS

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FEDERAL MIGRATORY BIRD CONSERVATION ACT

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PACIFIC MARINE FISHERIES COMPACT

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DOMESTICATION AND IMPORTATION OF WILDLIFE

DOMESTICATED GAME BREEDING

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IMPORTATION OF AQUATIC PLANTS AND ANIMALS

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BIRDS

CONTROL OF HARMFUL BIRDS

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AVIAN INFLUENZA WILDLIFE SURVEILLANCE

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MINING MITIGATION PLANS¹

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FORESTRY

REVIEW OF TIMBER HARVEST PLANS

Section 703(b)

1. But see Sections 4005(b)(5), 3800(b)(4) (mining operator to pay certain notice costs).