

Memorandum 2018-67

**Fish and Game Law
(Draft Tentative Recommendation)**

In this study, the Commission¹ is developing a proposed recodification of the Fish and Game Code.

Initially, the Commission intended to produce three tentative recommendations for this study, each presenting a different part of the proposed Fish and Wildlife Code. The first of those three tentative recommendations was released in April 2017.

At its May 2018 meeting, the Commission considered public comment on the first tentative recommendation.² In response to that input, the Commission decided to make a number of changes to the proposed law.³

The Commission also decided to prepare and circulate a comprehensive tentative recommendation (containing all of the proposed Fish and Wildlife Code), rather than continuing to release partial tentative recommendations.⁴

The staff has completed a staff draft of the full tentative recommendation, which incorporates the changes made by the Commission. The draft also reflects changes made by 2018 legislation. Provisions that were added or revised to reflect that legislation are followed by a Note identifying the bill that made the change.

Because of its size, the staff draft is not attached to this memorandum. Instead, it will be attached to a supplement to this memorandum.

A few noteworthy points about the draft and the process of releasing it for public review are discussed below.

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 2018-22 and its First and Section Supplements

3. See Minutes (May 4, 2018), pp. 8-13.

4. *Id.* at 9. This May 2018 decision was a reaffirmation of an earlier decision to the same effect. See Minutes (Aug. 2017), p. 9.

CONTENT

As noted above, the staff draft reflects all of the decisions made by the Commission at its May 2018 meeting.

Penalty Provisions

The decision that had the largest effect on the structure and content of the proposed legislation was the Commission's decision to aggregate all penalty provisions in the "Law Enforcement" division near the beginning of the proposed code. The penalty provisions are now located in a new "Part 4. Penalties for Specific Matters," within "Division 3. Law Enforcement."⁵ As decided, the content of the new part is organized in a way that parallels the organization of the remainder of the code. Some section renumbering, with smaller gaps between numbers, was required in order to fit the new part within the existing structure of the proposed code.

2018 Legislation

As noted above, the staff draft also includes all changes made to the Fish and Game Code by 2018 legislation.

Tribal Provisions

The staff draft also includes a division that was not included in any of the prior tentative recommendation drafts — "Division 5. Native Americans." That division includes all of the existing provisions of the Fish and Game Code that focus specifically on Native American Tribes and their members.

When the Commission first reviewed those provisions, the staff queried whether it would be appropriate to revise some provisions to better reflect current conditions. In response, the Department of Fish and Wildlife wrote to the Commission that it could not take a position on the matter until after it had completed its tribal consultation process. It also indicated that some changes would be significantly substantive and therefore beyond the scope of this study.⁶ The Commission decided to defer action on the issues involving tribes "to provide additional time for public comment and discussions between interested groups."⁷

5. See First Supplement to Memorandum 2018-67, attachment, pp. 95-187.

6. See Memorandum 2016-48.

7. Minutes (Sept. 2016), p. 9.

At the same meeting, the Commission decided to adopt a conservative approach in this study, under which a proposed change would only be considered for inclusion in the proposed legislation if it is plainly beneficial, does not present a significant risk of unintended consequences, and is not likely to be controversial.⁸ In the staff's opinion, revising the provisions that address tribal issues could require taking a position on matters on which there may be a difference of opinion between tribes and the state. That could involve the kind of controversy and possible inadvertent change that the Commission decided to avoid in this study.

For that reason, the staff draft does not raise or resolve any of the issues that may exist regarding the provisions affecting tribes. The resolution of such issues are probably best achieved through direct consultation between tribes and the Fish and Game Commission and Department of Fish and Wildlife.

Would the Commission prefer to handle those issues differently?

PUBLIC RELEASE AND REVIEW PROCESS

The staff draft is nearly 1,400 pages long. The PDF version of the document is more than 18 MB in size. Distribution, printing, and review of such a large document could present some practical difficulties.

In order to simplify the handling of *this* memorandum, it does not include the staff draft. Instead, the staff draft is attached to a one-page supplement to this memorandum, which will be released separately.

Those who wish to download and review the staff draft can find the file here:

<<http://clrc.ca.gov/pub/2018/MM18-67s1.pdf>>

Persons wishing to distribute the draft to others should email that link, rather than attempting to email the document itself. Some email servers cap the size of attachments, and the staff draft may exceed some caps.

Reviewers may wish to read the document on an electronic device, rather than printing hard copy. To help readers navigate to pages of interest, a top-level table of contents for the proposed legislation is set out below:

8. *Id.* at 6.

Division 1. General Provisions.....	1
Division 2. Administration.....	25
Division 3. Law Enforcement.....	88
Division 4. Inter-Jurisdictional Agreements.....	187
Division 5. Native Americans.....	208
Division 6. Hunting, Trapping, and Fishing.....	217
Division 7. Wildlife Propagation, Domestication, Possession, and Sale.....	481
Division 8. Birds.....	558
Division 9. Mammals.....	585
Division 10. Fish.....	670
Division 11. Invertebrates.....	770
Division 12. Amphibians.....	845
Division 13. Reptiles.....	850
Division 14. Plants.....	853
Division 15. Habitat Conservation and Enhancement.....	867
Division 16. Protected and Managed Areas.....	966
Division 17. Activities that Affect Wildlife.....	1030

To provide sufficient time for review of the proposed legislation, the staff has proposed a public comment deadline of June 20, 2019. That would provide a public review period of roughly six months.

Final proofing of the proposed legislation is ongoing. While the staff is uncomfortable publicly releasing a document that may still have technical issues, there is one major advantage to doing so: timing. If the Commission approves the release of a tentative recommendation at its December meeting, the document can be publicly released before the end of 2018. Public review and comment would then occupy the first half of 2019, leaving enough time in the remainder of the year for Commission consideration of public input (and any adjustment of the draft). That would leave open the possibility of approving a final recommendation in 2019, with introduction of implementing legislation in 2020.

Even after distributing a tentative recommendation, the staff intends to continue the process of checking the accuracy of the document. That review will occur during the six-month public review period.

CONCLUSION

The Commission needs to decide whether to approve the staff draft for distribution as a tentative recommendation, with or without changes.

Respectfully submitted,

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