

Memorandum 2021-26

Fish and Game Law: Phase One Public Comment

In this study, the Commission¹ has been directed by the Legislature to consider revision of the Fish and Game Code in order to make technical improvements to that law, without making any significant substantive change to the effect of the law.²

In December 2018 the Commission approved a tentative recommendation that would recodify the existing Fish and Game Code in a proposed new Fish and Wildlife Code.³

After releasing the tentative recommendation, the Commission decided to divide public comment into two phases. Phase One would consist of comments on changes to the text of existing law. Phase Two would address the proposed organizational changes. **As part of the Phase One process, the Commission will prepare a draft recommendation to make textual improvements to the *existing* Fish and Game Code.**

At its March 2021 meeting, the Commission approved a methodology⁴ for analysis of the Phase One public comments, which were received from the Fish and Game Commission (FGC) and the Department of Fish and Wildlife (DFW). This memorandum follows the approved methodology.⁵

All further statutory references in this memorandum are to the existing Fish and Game Code or to the proposed Fish and Wildlife Code that is set out in the tentative recommendation.

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

3. See Memorandum 2018-67 and its First Supplement; Minutes (Dec. 2018), p. 10.

4. See Memorandum 2021-16, pp. 2-3; Minutes (Mar. 2021), p. 4.

5. Relevant excerpts from the FGC and DFW comments are reproduced as an Exhibit to this memorandum.

CHANGES THAT SHOULD BE MADE

The following proposed changes were supported by one or both of the commenting entities, with neither opposing the change. The staff recommends that they be provisionally approved for inclusion in the draft recommendation that is being assembled.

This entire section of the memorandum will be treated as a consent item. Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to provisionally approve all of the changes in this section as a group.

Proposed Section 4704 (Existing Section 12001.5)

Proposed Section 4704 would correct an apparently obsolete cross-reference. Both FGC and DFW support the proposed correction.

The staff recommends that the change be included in a draft recommendation as follows:

§ 12001.5 (amended). Specified punishments

12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person has been convicted of one or more offenses that was a violation of a section listed in subdivision (b) separate from the offense before the court, the court may order as a condition of probation upon conviction of the offense before the court that is also a violation of a section listed in subdivision (b), that the person attend the hunter education course designated in Section 3051 and perform community service, preferably relating to natural resources if that type of community service is available, as follows:

(1) If the person has one separate conviction, not more than 200 hours of community service.

(2) If the person has two or more separate convictions, not more than 300 hours of community service.

(b) This section applies to violations relating to a taking in Sections 3007, ~~3700~~ 3700.1, 4330, and 4750, and a sale or purchase of parts of a bear in Section 4758.

Comment. Section 12001.5 is amended to update a cross-reference to a repealed code section.

Proposed Section 4860 (Existing Section 12002.2.1)

Proposed Section 4860 would delete an obsolete cross-reference and references to obsolete forms of privileges. Both FGC and DFW support the proposed deletions.

The staff recommends that the changes be included in a draft recommendation as follows:

§ 12002.2.1 (amended). Punishments for specified offenses

12002.2.1. (a) Notwithstanding any other provision of law, a violation of any of the following is an infraction, punishable by a fine of not less than fifty dollars (\$50), or more than two hundred fifty dollars (\$250), for a first offense:

- (1) Subdivision (a) of Section 6596.1.
- (2) Subdivision (a) of Section 7149.45.
- (3) Subdivision (b) of Section 7180.1.

~~(4) Section 1.18 of Title 14 of the California Code of Regulations.~~

(b) If a person is convicted of a violation of any of the sections listed in subdivision (a) within five years of a separate offense resulting in a conviction of a violation of any of those sections, that person shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500).

(c) If a person convicted of a violation of any of the sections listed in subdivision (a) produces in court the applicable ~~sport fishing ocean enhancement stamp~~, sport fishing ocean enhancement validation, ~~second rod sport fishing stamp~~, second rod sport fishing validation, ~~Colorado River special use stamp~~, or Colorado River special use validation, ~~Bay Delta Sport Fishing Enhancement Stamp~~ or Bay Delta Sport Fishing Enhancement validation issued pursuant to this code and valid at the time of the person's arrest, and if the taking was otherwise lawful with respect to season, limit, time, and area, the court may reduce the fine imposed for the violation to twenty-five dollars (\$25).

Comment. Section 12002.2.1 is amended to delete obsolete material.

Proposed Sections 4916 (Existing Section 8246) and 4918 (Existing Section 8246.2)

Proposed Sections 4916 and 4918 would correct three apparently erroneous cross-references to a subdivision of Section 8246. Both FGC and DFW support the proposed corrections.

The staff recommends that the changes be included in a draft recommendation as follows:

§ 8246 (amended). Compromise or dismissal of suspension or revocation of commercial salmon fishing privilege

8246. (a) At any time after notice of an order suspending or revoking of a person's commercial salmon fishing privilege is issued by the commission, and before the order of suspension or revocation is final, the commission may, with the agreement of the person subject to the action, compromise or dismiss the action to suspend or revoke the commercial salmon fishing privilege in the best interests of the state, or the commission may compromise or dismiss the action with the agreement of the person subject to the action on terms and conditions, which may include, but are not limited to, the payment of civil damages, the reduction of a revocation to a suspension for a specified period of time, or any other terms and conditions.

(b) The commission, after notice and opportunity for hearing, may suspend or revoke the commercial fishing privilege, authorized under a license issued for the purposes of Section 7850, for any violation of a term or condition of an agreement to compromise or dismiss a separate suspension or revocation action that was made pursuant to subdivision (a).

(c) If the commission orders a suspension or revocation of a person's commercial salmon fishing privilege, any permit issued pursuant to this article shall be renewed when the next renewal is due or the permit shall expire as provided in Section 8233.

(d) Subdivision ~~(b)~~ (a) does not apply if an action is brought to recover civil damages under Section 2014 from the person subject to action under this section.

Comment. Subdivision (d) of Section 8246 is amended to correct an erroneous cross-reference.

§ 8246.2 (amended). Determination of civil damages

8246.2. (a) The commission, in consultation with the department, shall adopt regulations for the determination of civil damages provided for in subdivision ~~(b)~~ (a) of Section 8246 that give due consideration to the appropriateness of the civil damages with respect to all of the following factors:

- (1) The gravity of the violation.
- (2) The good faith of the convicted licensee.
- (3) The history of previous violations.
- (4) The damage to the fishery.
- (5) The cost of restoration of the fishery.

(b) Civil damages imposed under subdivision ~~(b)~~ (a) of Section 8246 shall be due and payable on or before a date that is 30 days after the compromise is entered into.

Comment. Section 8246.2 is amended to correct two erroneous cross-references.

Proposed Section 5260 (Existing Section 12023)

Existing law provides two special penalties for a particular offense, each applicable in a specified circumstance. One is a lower penalty applied for a repeat violation. The other is a greater penalty applied to a particular aggravated circumstance. Proposed Section 5260 would add language making clear that if grounds for imposing both special penalties exist, the greater penalty would be the one applicable. Both FGC and DFW support making that clarifying change.

The staff recommends that the change be included in a draft recommendation as follows:

§ 12023 (amended). Specified punishments

12023. (a) Notwithstanding ~~Section~~ Sections 12002 and 12007, any person who violates Section 6400 through the use of an aquatic nuisance species, as defined in Section 6431, is guilty of a misdemeanor, punishable by all of the following:

(1) Imprisonment in the county jail for not less than six months or more than one year, a fine of not more than fifty thousand dollars (\$50,000) for each violation, or both that imprisonment and fine.

(2) Revocation of all of the defendant's licenses and permits issued pursuant to this code.

(b) A person who personally or through another violates Section 6400, through the use of an aquatic nuisance species, is liable to the owner of any privately or publicly owned property for any damages to that property caused by the violation. A person who violates Section 6400 through the use of an aquatic nuisance species shall also be liable for all monetary damages directly, indirectly, and proximately caused thereby, including, but not limited to, damages to any commercial fishery, sport fishery, or to the public communities which depend upon those fisheries for a portion of their annual income. The Attorney General may file a civil action on behalf of the fisheries or communities that are damaged as a result of the violation. In addition, a private citizen who suffers damages as a result of the violation may file a civil action against the violator.

(c) A person who allows an aquatic nuisance species to escape from ~~his or her~~ their property to the property of another, whether privately or publicly owned, is liable to the owner of the intruded upon property for any damages caused by the species.

(d) This section shall not apply to the placement of any live fish, any fresh or salt water animal, or any aquatic plant from the

discharge or exchange of ballast water from any vessel as defined by Section 21 of the Harbors and Navigation Code.

(e) This section does not apply to the placement of an aquatic plant by a person who was unaware that ~~he or she was~~ they were in possession of the plant. This exception includes circumstances in which a plant becomes unknowingly and temporarily attached or affixed to a boat, boat trailer, or boat motor.

Comment. Subdivision (a) of Section 12023, which specifies punishment for a violation of Section 6400, is amended to reconcile its relationship with Sections 12002 and 12007, which also specify punishment for a violation of Section 6400.

Subdivisions (c) and (e) are revised to eliminate generated pronouns.

Proposed Section 6328 (Existing Section 5650.1)

Proposed Section 6328 would narrow an apparently overbroad reference. FGC and DFW support the change.

The staff recommends that the change be included in a draft recommendation as follows:

§ 5650.1 (amended). Specified punishments

5650.1. (a) A person who violates Section 5650 is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law, except as provided in subdivision (j).

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the discharge, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of any civil penalty on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the

State of California, and any actions relating to the same violation may be joined or consolidated.

(e) In a civil action brought pursuant to this ~~chapter~~ section in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.

(f) After the party seeking the injunction has met its burden of proof, the court shall determine whether to issue a temporary restraining order, preliminary injunction, or permanent injunction without requiring the defendant to prove that it will suffer grave or irreparable harm. The court shall make the determination whether to issue a temporary restraining order, preliminary injunction, or permanent injunction by taking into consideration, among other things, the nature, circumstance, extent, and gravity of the violation, the quantity and characteristics of the substance or material involved, the extent of environmental harm caused by the violation, measures taken by the defendant to remedy the violation, the relative likelihood that the material or substance involved may pass into waters of the state, and the harm likely to be caused to the defendant.

(g) The court, to the maximum extent possible, shall tailor a temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow the defendant to continue business operations in a lawful manner.

(h) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003 and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the department for deposit in the Fish and Game Preservation Fund. These funds may be expended to cover the costs of legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

(i) Except as provided in subdivision (j), in addition to any other penalty provided by law, a person who violates Section 5650 is subject to a civil penalty of not more than ten dollars (\$10) for each gallon or pound of material discharged. The total amount of the civil penalty shall be reduced for every gallon or pound of the illegally

discharged material that is recovered and properly disposed of by the responsible party.

(j) A person shall not be subject to a civil penalty imposed under this section and to a civil penalty imposed pursuant to Article 9 (commencing with Section 8670.57) of Chapter 7.4 of Division 1 of Title 2 of the Government Code for the same act or failure to act.

Comment. Subdivision (e) of Section 5650.1 is amended to revise an overbroad reference.

CHANGES THAT SHOULD NOT BE MADE

The following proposed changes were opposed by one or both of the commenting entities, with neither supporting the change. The staff recommends that they not be included in the proposed recommendation.

This entire section of the memorandum will be treated as a consent item. Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to decide that none of the proposed revisions described in this section should be included in the draft recommendation.

Proposed Section 6350 (Existing Section 12007)

Proposed Section 6350 would revise a cross-reference within existing Section 12007 to narrow its scope. FGC did not comment on this revision, but DFW believes it would be problematic. They maintain that the existing scope of the cross-reference is preferable.

The staff sees no reason to dispute that contention.

The staff recommends that the proposed revision of existing Section 12007 not be included in the draft recommendation.

CHANGES THAT SHOULD PRESUMPTIVELY BE MADE

Nonsubstantive Restatements of Existing Sections for Clarity (Existing Sections 12002.4, 3860, 3801.6(c), 6656)

Proposed Sections 4934, 5332, 5344(b), and 6000 would all restate language to make existing law easier to understand and use.

FGC and DFW comment that the proposed restatements would not cause a substantive change but stop short of expressly supporting the changes. For that

reason, none of the proposed restatements have been included as consent items for approval in this memorandum.

Instead, the staff recommends that the proposed changes be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the changes in a future memorandum, for approval as consent items.

Proposed Section 4900 (Existing Section 12002.6)

Proposed Section 4900 would revise the introductory clause of existing Section 12002.6, to clarify that a specified penalty may be imposed in addition to any other applicable penalty. FGC and DFW both commented that the revision would not cause a substantive change. However, as neither entity expressly supported making the revision, it has not been included as a consent item for approval in this memorandum.

Instead, the staff recommends that the revision be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revision in a future memorandum, for approval as a consent item.

Proposed Section 5680 (Existing Section 12002.8(d)(1))

Proposed Section 5680 would correct an apparent technical error in a cross-reference. FGC and DFW both commented that the proposed revision would not cause any substantive changes. However, as neither entity expressly supported making the revision, it has not been included as a consent item for approval in this memorandum.

Instead, the staff recommends that the revision be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revision in a future memorandum, for approval as a consent item.

Proposed Sections 5710, 5720, and 5820 (Existing Section 12002.8(d))

Proposed Sections 5710, 5720, and 5820 would all revise the introductory clause of existing Section 12002.8(d), a penalty provision, to clarify that the penalty specified in the section may be imposed in addition to any other applicable penalty provided for in the existing code. FGC and DFW both commented that in none of the three proposed sections would the revision cause any unintended substantive changes. However, as neither entity expressly supported making the revision, it has not been included as a consent item for approval in this memorandum.

Instead, the staff recommends that the revision be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revision in a future memorandum, for approval as a consent item.

Proposed Section 5880 (Existing Section 8429)

Proposed Section 5880 would revise existing Section 8429 to insert what appears to have been an inadvertently omitted word. FGC and DFW both commented that the proposed revision would not cause any problem or substantive change. However, as neither entity expressly supported making the revision, it has not been included as a consent item for approval in this memorandum.

Instead, the staff recommends that the revision be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revision in a future memorandum, for approval as a consent item.

Proposed Sections 6050 (Existing Section 12002.5) and 6204 (Existing Section 12008.1(a))

Proposed Sections 6050 and 6204 would each revise a cross-reference to a lengthy section of the existing code to more precisely refer to the single relevant subdivision in the cross-referenced section. FGC commented that the revision would not cause a substantive change. DFW commented that the proposed revision could be made. As neither entity expressly supported making the revision, it has not been included as a consent item for approval in this memorandum.

Instead, the staff recommends that the revision be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revision in a future memorandum, for approval as a consent item.

Proposed Sections 6250 (Existing Section 714(f)) and 6350 (Existing Section 12007)

Proposed Sections 6250 and 6350 would each revise a cross-reference to a lengthy section of the existing code to more precisely refer to the single relevant subdivision within the cross-referenced section. FGC did not comment on either of these revisions, while DFW agreed that that both could be made. However, as neither entity expressly supported making either revision, they have not been included as consent items for approval in this memorandum.

Instead, the staff recommends that the revisions be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revisions in a future memorandum, for approval as consent items.

Proposed Section 6500 (Existing Section 5653(c))

Proposed Section 6500 would revise a reference within existing Section 5653(c) to “regulations implementing this section” to refer instead to regulations adopted pursuant to existing Section 5653.9, a section that charges DFW with adopting regulations to carry out Section 5653.

FGC did not comment on this revision. DFW indicates that revision can be made and does not think it would cause any problems. However, as neither entity expressly supported making the revision, it has not been included as a consent item for approval in this memorandum.

Instead, the staff recommends that the revision be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revision in a future memorandum, for approval as a consent item.

FURTHER INPUT REQUIRED

The staff believes that further information is required before resolving the treatment of the proposed changes described below. The staff will work with the commenters informally to assess how much time is needed to provide the necessary information. Once that information has been received, the issue will be presented to the Commission for decision.

Proposed Section 4862 (Existing Section 12002.2)

As a general rule, existing Section 7145(a) requires that a person who is fishing have a valid fishing license on their person while fishing. Under existing Section 12002.2 the penalty for a violation of that requirement can be reduced or the charge dismissed if the person produces the required license in court (and it was valid at the time of the arrest).

Section 12022.2(b) governs a regular fishing license. It requires that the license produced in court be valid at the time of the arrest.

Section 12022.2(c) governs a lifetime fishing license. It only requires that the license produced be valid (i.e., it is silent as to validity at the time of the arrest).

Proposed Section 4862 would have filled the apparent gap in Section 12022.2(c), by requiring that the lifetime fishing license produced be valid “at the time of the violation.”

Both FGC or DFW were generally supportive of making that change. However, in reviewing the matter, the staff thought it might be helpful to seek further input on a particular aspect of the proposed change. In general, existing law in this and related provisions refers to validity at the time of *arrest*. Proposed Section 4862 would add language requiring validity at the time of the *violation*. Those are not necessarily the same times. The staff would like to hear the entities’ thoughts on which standard is better and whether it would be helpful to standardize the language on this point throughout the code.

The staff will make those inquiries and bring this issue back for Commission consideration once we have more information.

Proposed Section 4864 (Existing Section 12000(b)(2))

Proposed Section 4864 would continue existing Section 12000(b)(2), which specifies a criminal penalty for a particular type of violation. The Commission noted that another code provision specifies a different penalty for the same offense.

FGC and DFW both agree that a conflict exists, but are not sure what was intended by the Legislature.

The staff recommends that it investigate further, and report back to the Commission with another staff recommendation on the matter later in this study.

Proposed Section 4874 (Existing Section 12153)

Proposed Section 4874 would revise a cross-reference to a range of existing sections, the last one of which was repealed and does not appear to have been continued elsewhere. Both entities commented on the proposed change, but the staff is unsure of the meaning of one of the comments.

The staff recommends that it investigate further, and report back to the Commission with another staff recommendation on the matter later in this study.

Proposed Sections 4975-4988 (Existing Sections 8630-8634, and 9008(a))

Proposed Sections 4975 through 4988 would continue most of an existing statutory article on the seizure of illegally used fishing nets. Another provision of existing law expressly provides that the article also applies to illegally used traps. For that reason, the proposed law added references to traps throughout the article.

FGC and DFW both support those changes.

However, looking ahead to other related provisions, the staff believes it would be helpful to investigate the matter further. **The staff will do so and bring the issue back later in this study.**

Proposed Section 4980 (Existing Section 8632)

Proposed Section 4980 would continue existing Section 8632:

8632. Within three days after the department has been notified in writing that a vessel carrying a seized net has arrived in port, the department may remove the net from the vessel, unless the owner has furnished a bond in accordance with Section 8633. The notice shall be sufficient when delivered to the office of the department nearest to the port at which the vessel has arrived.

The tentative recommendation noted that it is not clear who would be providing the notice that triggers the application of that section. Both FGC and DFW agree that it is not clear who would give the referenced notice.⁶

The staff will investigate further and bring the issue back to the Commission later in the study.

Proposed Section 5108 (Existing Section 12002.3)

Existing Section 7121 prohibits unlawfully selling, purchasing, or possessing fish *or amphibia*. Existing Section 12002.3 provides enhanced punishments for a certain violations of Section 7121. However, Section 12002.3 refers only to fish. It does not mention amphibia.

To avoid any uncertainty, proposed Section 5108, which would continue Section 12002.3, would expressly refer to fish *and* amphibia. A Note asked for comment on that proposed change.

6. Existing Section 8630(a) does provide that a person who is authorized to seize a net must report such a seizure to the department. However, it is not clear whether that is the notice referenced in Section 8632.

FGC and DFW both commented that this revision would not be problematic, but neither affirmatively supported making the revision. DFW also noted that the revision was unnecessary, based on the statutory definition of “fish” (which includes amphibia).

The staff would like to investigate this issue a bit more and bring the matter back to the Commission later in this study.

Proposed Sections 5802 (Existing Section 12009) and 5804 (Existing Section 12006.6)

Notes following Proposed Sections 5802 and 5804 ask several questions about how existing Sections 12009 and 12006.6 were intended to interrelate. FGC and DFW have provided helpful answers. In the staff’s view, it would be helpful to revise the law to make its meaning clearer.

The staff would like to consult with the commenting entities further about whether they agree that such revisions would be helpful. If so, the staff would try to draft language to make the meaning of the existing provisions clearer, without changing their substantive effect. The staff would report back to the Commission about this later in the study.

NO FURTHER ACTION RECOMMENDED

This part of the memorandum would expand on the Commission’s approved methodology for this study, by adding a new category of treatment of issues raised in the tentative recommendation.

If, after considering the public comment on a proposed change, the staff concludes that there is not sufficient evidence of a problem that would justify making the change, it will be noted here.

This entire section of the memorandum will be treated as a consent item. Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to approve the staff’s recommendation that the matters discussed below be set aside without further action being taken.

Proposed Sections 5200 and 5204 (Existing Section 2125(a)-(b))

Existing Section 2125 addresses the violation of laws that regulate certain acts involving wild animals. Subdivision (a) of that section addresses a violation of the

chapter that contains Section 2125. Subdivision (b) addresses a violation of the *article* that contains the section. That looked like a possible error, so a Note asked for comment.

DFW commented that it did not know whether the difference was intended. There is no evidence that the existing distinction was inadvertent or is causing problems in practice. **The staff recommends that the matter be set aside without further action.**

PURELY INFORMATIONAL MATTERS

The tentative recommendation included explanatory Notes relating to or asking general questions about the provisions listed below. Where there was no response to these Notes, or the response does not show the need for reform, those issues will not be discussed further (unless a Commissioner raises an issue).

For completeness, sections that fall into this category are listed below.

- **Proposed Section 4115 (Existing Section 853)**
- **Proposed Section 4712 (Existing Section 12005.5)**
- **Proposed Section 4802 (Existing Section 12005.5)**
- **Proposed Section 5310 (Existing Section 12002(c))**
- **Proposed Section 5340 (Existing Section 12002(c))**
- **Proposed Section 5342 (Existing Section 12002(c))**
- **Proposed Section 5400 (Existing Sections 12003.2, 12008(c))**
- **Proposed Section 5402 (Existing Section 4800(c))**
- **Proposed Section 6100 (Existing Section 12000(b))**
- **Proposed Section 6104 (Existing Section 12012.5)**
- **Proposed Section 7560 (Existing Section 14102)**

Respectfully submitted,

Steve Cohen
Staff Counsel

PHASE ONE COMMENTS (MM21-26)

The table below sets out the Comments of the Fish and Game Commission and the Department of Fish and Wildlife that are addressed in Memorandum 2021-26.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
4115	853		The Note misstates existing sec. 853(c). The proposed restatement does not cause a substantive change in the meaning of the provision.
4704	12001.5(b)	FGC believes the reference to sec. 3700 is appropriately replaced with sec. 3700.1.1. In 2001, sec. 3700.1 was adopted and duplicated the prohibition in sec. 3700 (Stats. 2001, Chap. 112). In 2015, 3700 was repealed, leaving only 3700.1 to impose the prohibition (Stats. 2015, Chap. 683).	Sec. 12001.5(b) can be amended to replace "3700" with "3700.1." Section 3700 was repealed and replaced with section 3700.1.
4712	12005.5	Note is informational only. FGC has no comment on CLRC's authority to recodify provisions adopted by initiative.	Note is informational only. CDFW has no comment on the Commission's authority to recodify provisions adopted by initiative.
4802	12005.5	Note is informational only. FGC has no comment on CLRC's authority to recodify provisions adopted by initiative.	Note is informational only. CDFW has no comment on the Commission's authority to recodify provisions adopted by initiative.
4860	12002.2.1	FGC believes that the proposed deletions of obsolete cross references in sec. 4860 are appropriate.	All CLRC proposed deletions of obsolete cross references in sec. 4860 are fine.
4862	12002.2(c)	FGC believes the proposed addition appears consistent with legislative intent given the legislative addition of "and valid at the time of the person's arrest" to (b) by Stats. 1989, Chap. 826 (prior to the addition of (c)).	DFW believes the restatement of sec. 12002.2(c) is not problematic because it would clarify that production of a lifetime sport fishing license valid at the time of the violation would allow the charge to be dismissed.
4864	12000(b)(2)	CLRC note (1): No comment. CLRC note (2): FGC believes there is a conflict, but is not proposing a resolution; it is unclear which penalty the legislature intends to apply to violations of sec. 6596.1.	Two comments: 1) Informational only. No comment. 2) CDFW agrees that there is a conflict but is not commenting on a resolution of this conflict because it is unclear which penalty the legislature intends to apply to violations of sec. 6596.1.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
4874	12153	FGC believes the continuation of existing sec. 12153 is appropriate. CLRC's proposed narrowing of the cross-references is a substantive change, most notably by omitting reference to sec. 2012. The continued reference to "any of the provisions of this code relating to the use of nets" alone merits retaining sec. 12153.	CDFW believes that sec. 12153 should be amended to change the reference from repealed sec. 1060 to sec. 1059 because it allows for the continuation of forfeiture for other licensing violations and net-related violations.
4900	12002.6(a)	FGC believes that restatement of subsection (a) does not cause a substantive change. Reorganizing Fish and Game Code is outside the scope of the current review; therefore, FGC is not commenting on the renumbering of the cross-references.	CDFW believes that the restatement of subsection (a) excluding the numbered sections listed beneath it does not cause a substantive change in the meaning of that subsection. CDFW is not commenting at this time on the renumbered sections that are a part of (a) because they relate to the reorganization of the code which CDFW is not addressing at this time.
4916	8246(d)	CLRC note (1): FGC believes that CLRC's proposed discontinuation of the cross-reference would not cause any problem. CLRC note (2): FGC believes that CLRC's proposed revisions to correct the incorrect references to sec. 8246(b) in secs. 8246(d) and 8246.2(b) do not cause any problems.	Two comments: (1) The CLRC proposed discontinuation of the cross-reference would not cause a problem. (2) All CLRC proposed revisions to correct the incorrect reference to sec. 8246(b) in secs. 8246(d) and 8246.2(b) do not cause any problems.
4918	8246.2(a), (b)	FGC agrees that the reference in sec. 8246.2(a) should be to sec. 8246(a) rather than sec. 8246(b).	CDFW agrees that the reference in sec. 8246.2(a) to "subdivision (b) of Section 8246" should correctly refer to "subdivision (a)".
4934	12002.4	FGC believes that the proposed restatement does not effect a substantive change.	CDFW believes that the proposed restatement of sec. 12002.4 does not cause a substantive change in the meaning of that section.
4975	8631	FGC believes that the proposed approach is appropriate as the provisions in Chapter 3, Article 3 apply to the seizure of both nets and traps; therefore, sec. 8631 can be amended to state both nets and traps may be tagged.	The Note actually pertains to Article 3 commencing with sec. 4975. CDFW agrees that these provisions should apply to the seizure of nets and traps.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
4980	8632	FGC agrees with CLRC that existing statute is not clear about who would notify DFW that a vessel carrying a seized net has arrived in port. (See comment to existing Section 4975)	CDFW agrees that the existing statute does not describe who would notify the department that a vessel carrying a seized net has arrived in port. CDFW is uncertain who the legislature intended to make such notification. (See comment to existing Section 4975)
4982	8633	(See comment to existing Section 4975)	(See comment to existing Section 4975)
4984	8635	(See comment to existing Section 4975)	(See comment to existing Section 4975)
4986	8630	(See comment to existing Section 4975)	(See comment to existing Section 4975)
4988	8634	(See comment to existing Section 4975)	(See comment to existing Section 4975)
5108	12002.3	FGC believes the proposed revision is not problematic nor is the potential ambiguity identified in the CLRC note problematic in practice.	Two comments: (1) The proposed revision to sec. 12002.3 is not problematic, but CDFW notes that the definition of "fish" (Section 45) already includes amphibians, so it is unnecessary to also list amphibians. (2) The ambiguity described in this Note has not created a problem in practice.
5204	2125(b)	no comment	CDFW agrees that there is a difference between sec. 2125(a) that refers to "chapter" and sec. 2125(b) that refers to "article". CDFW does not know if this distinction was intended or unintended.
5260	12023	(1) FGC believes that the absence of a definition in Fish and Game Code for "aquatic nuisance species" is problematic and could be added, but is outside the scope of the current review; adding a definition would be a substantive and potentially controversial change. (2) FGC believes the phrase "and 12007" should be added after "Notwithstanding Section 12002" in sec. 12023 and believes this does not have a substantive effect on the section.	Two comments: (1) CDFW believes that a definition of "aquatic nuisance species" should be added to existing law, but doing so would be a significant substantive change because of possible controversy. (2) CDFW believes that the phrase "and 12007" should be added after "Notwithstanding Section 12002" in sec. 12023 and agrees this does not have a substantive effect on the section.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
5310	12002(c)	no comment	The reorganization of sec. 12002(c) is beyond the scope of CDFW's review at this time.
5332	3680	FGC agrees that the restatement of sec. 3680 does not cause a substantive change.	CDFW agrees that the restatement of sec. 3680 for textual clarity concerning racing pigeons does not cause a substantive change to the section.
5340	12002(c)	no comment	The reorganization of sec. 12002(c) is beyond the scope of CDFW's review at this time.
5342	12002(c)	no comment	The reorganization of sec. 12002(c) is beyond the scope of CDFW's review at this time.
5344	3801.6(c)	FGC agrees that the restatement of sec. 3801.6(c) does not effect a substantive change to the section.	CDFW agrees that the restatement of sec. 3801.6(c) does not cause a substantive change to the section.
5400	12003.2, 12008(c)	Reorganizing Fish and Game Code is outside the scope of the current review; however, FGC believes the combined statement does not change the substantive effect and could be considered during any reorganization.	CDFW agrees that the combined statement of the penalty sections (secs. 12003.2 and 12008) that relate to violations of sec. 4700 does not cause a substantive change, however, the reorganization of the code is beyond the scope of the current review.
5402	4800(c)	no comment	Note is informational only. CDFW is not commenting on the authority of CLRC to change provisions of law adopted by initiative.
5680	12002.8(d)(1)	FGC believes the proposed revision removing the reference to sec. 8495 in sec. 12002.8(d)(1) and replacing it with sec. 8494 does not cause any substantive changes. Reorganizing Fish and Game Code is outside the scope of the current review; therefore, FGC is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.	CDFW does not believe the proposed revision removing the reference to sec. 8495 in sec. 12002.8(d)(1) and replacing it with sec. 8494 causes any substantive changes. CDFW is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
5710	12002.8(d)	FGC believes the proposed revision in subdivision 12002.8(d) substituting "In addition to any other applicable penalty" for "Notwithstanding Sections 12000, 12001, and 12002" does not cause unintended substantive changes. Reorganizing Fish and Game Code is outside the scope of the current review; therefore, FGC is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.	CDFW does not believe the revised language substituting "In addition to any other applicable penalty" for "Notwithstanding Sections 12000, 12001, and 12002" in sec. 12002.8(d) causes any unintended substantive changes or problems. CDFW is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.
5720	12002.8(d)-(f)	FGC believes the proposed revision in subdivision 12002.8(d) substituting "In addition to any other applicable penalty" for "Notwithstanding Sections 12000, 12001, and 12002" does not cause unintended substantive changes. Reorganizing Fish and Game Code is outside the scope of the current review; therefore, FGC is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.	CDFW does not believe the proposed revision substituting "In addition to any other applicable penalty" for "Notwithstanding Sections 12000, 12001, and 12002" in sec. 12002.8(d) causes unintended substantive changes. CDFW is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.
5802	12009	Each section imposes separate penalties based on separate aggravating circumstances; as such, FGC agrees with CLRC notes (a) and (b), as both penalties potentially could be applied and so two fines could be imposed. As to CLRC note (c), the fine pursuant to each statute should be apportioned according to the respective statute.	Three comments: (a) and (b) Yes, as to both. CDFW believes the penalty in sec. 12006.6 is intended to be separate and distinct from the penalty imposed under sec. 12009. (c) CDFW believes money collected under sec. 12009 would be apportioned according to the statute: one half to "Abalone Restoration Account" and one half to "County Treasury". Sec. 12006.6(d) applies to take from closed areas, and its penalty provision is "in addition to Section 12009". Thus, CDFW believes these penalties are separate and distinct from sec. 12009 and would be apportioned according to sec. 12006.6(d): "at least 50 percent...in the Fish and Game Preservation Fund...for support of Special Operations Unit of the Wildlife Protection Division".

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
5804	12006.6	FGC believes each section imposes separate penalties based on separate aggravating circumstances.	CDFW believes the penalty in sec. 12006.6 is intended to be an additional penalty separate and distinct from the penalty imposed under sec. 12009.
5820	12002.8(d)	FGC believes the proposed revision in subdivision 12002.8(d) substituting "In addition to any other applicable penalty" for "Notwithstanding Sections 12000, 12001, and 12002" does not cause unintended substantive changes. Reorganizing Fish and Game Code is outside the scope of the current review; therefore, FGC is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.	CDFW does not believe the proposed revision substituting "In addition to any other applicable penalty" for "Notwithstanding Sections 12000, 12001, and 12002" in sec. 12002.8(d) causes unintended substantive changes. CDFW is not commenting at this time on CLRC's proposal to separate sec. 12002.8 by species.
5880	8429	FGC believes the terms "commercial light boat" and "commercial squid light boat" are synonymous, and that the proposal to add the word "squid" in sec. 8429 will not cause a problem.	The terms "commercial light boat" and "commercial squid light boat" are synonymous; the proposed language adding the word "squid" to "commercial light boat owner's permit" in sec. 8429 will not cause a problem.
6000	6656	FGC believes that the proposed restatement of sec. 6656 would not cause any problems or substantive change in the meaning of the section. FGC believes the proposed revision to sec. 6656(a) would not cause any problems.	Two comments: 1) CDFW does not believe the restatement of sec. 6656 causes any problems or substantive changes. 2) CDFW does not believe the revision to sec. 6656(a) causes any problems.
6050	12002.5	FGC believes that the more precise cross-reference does not effect a substantive change.	CDFW agrees that sec. 12002.5 can be amended to change "Section 12002" to "Section 12002, subdivision (a)."
6100	12000(b)	no comment (Note is informational only)	no comment (Note is informational only)
6104	12012.5	no comment (Note is informational only)	no comment (Note is informational only)
6204	12008.1(a)	FGC believes that it is not problematic to amend sec. 12008.1(a) to change "Section 12002" to "Section 12002, subdivision (a)."	CDFW agrees that sec. 12008.1(a) can be amended to change "Section 12002" to "Section 12002, subdivision (a)."

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
6250	711.4(f)	no comment	CDFW agrees that sec. 711.4(f), first sentence, can be amended to change "Section 12002" to "Section 12002, subdivision (a)."
6328	5650.1(e)	FGC believes that the accurate reference in sec. 5650.1(e) is "section" and should replace "chapter." FGC has no comment about dividing sec. 5650.1, as reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW believes no change is needed to subsections 5650.1(d), (f), and (g). However, sec. 5650.1(e) should be amended to replace "chapter" with "section."
6350	12007	no comment	Two comments: (1) Sec. 12007 can be amended to change "Section 12002" to "Section 12002, subdivision (a)." (2) CDFW believes the proposed revision will be problematic because it would narrow the cross-reference to sec. 1602(a), when the cross-reference also needs to include secs. 1602(b) and (d).
6500	5653(c)	no comment	Sec. 5653(c) third sentence can be amended by replacing "implementing this section" with "adopted pursuant to Section 5653.9." This is consistent with the Commission's proposed revision described in the Note, which CDFW does not think would cause any problems.
7560	14102	FGC believes no change is needed to sec. 14102. The per diem authorized by sec. 14102 was increased to \$100 effective January 1, 2016 by AB 1527 (Stats 2015, Sec 116).	CDFW believes that no change is needed to sec. 14102. CDFW observes that the Note incorrectly states that sec. 14102 provides for a per diem of \$10. In fact, it provides for a per diem of \$100, which is also the default per diem under Government Code sec. 11564.5.