

Memorandum 2022-13

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 response to that directive, in December 2018 the Commission approved and distributed 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 the proposed statutory revision into two phases, with “Phase One” addressing and proposing textual improvements to existing law in a draft recommendation that would revise the existing Fish and Game Code.⁴

This memorandum continues analysis of public comment on “Phase One” changes proposed by the Commission, pursuant to a methodology previously approved by the Commission.⁵ The comments analyzed have been submitted by the Fish and Game Commission (hereafter, “FCG”), and the Department of Fish and Wildlife (hereafter, “DFW”).⁶

Unless otherwise indicated, all statutory references in the memorandum are to the existing Fish and Game Code, or to the proposed Fish and Wildlife Code as set out in the Commission’s previously distributed 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 2021-11; Minutes (Feb. 2021), p. 5. “Phase Two” would involve consideration of proposed organizational changes to the existing law.

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

6. The comments are reproduced in an Exhibit to this memorandum.

CHANGES THAT SHOULD BE MADE

As has been indicated in previous “public comment” memoranda in this study, this first category of proposed revisions contains those revisions supported by one or both commenting entities, with neither opposing the change.

For clarity, beginning with this memorandum this category of revisions will be divided into two subcategories.

Proposed revisions in this category that have not been previously presented to the Commission in this phase of the study will be identified in this and future memoranda as “new” items. Typically, the support for these proposed revisions is based solely on written comment submitted by one or both commenting entities on the previously distributed tentative recommendation.

Proposed revisions in the category that have been previously presented to the Commission in this phase of this study, but for which no decision was made, will be identified in this and future memoranda as “follow-up” items. Typically, these are proposed revisions for which the Commission approved follow-up contact with one or both commenting entities, to assist the Commission in deciding whether to approve a proposed revision for inclusion in a draft recommendation.

The staff continues to recommend that all proposed revisions in this category be provisionally approved for inclusion in the draft recommendation that is being assembled.

Similarly, this entire category will continue to be treated as a consent item. Unless a Commissioner or member of the public requests that a revision in this section be discussed, it will not be individually presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to provisionally approve all revisions in this section as a group for inclusion in the draft recommendation.

“New” Items

Proposed Section 54585 (Existing Section 1932)

Proposed Section 54835 would continue existing Section 1932.

A Commission Note following the proposed section indicated that a reference in the existing section to a definition of the term “wildlife” provided by another code section would not be continued in the proposed law, as the other section defined the term generally to apply throughout the code.

DFW concurred with the deletion of the reference to the definition in existing Section 1932. FGC did not respond to the Note.

The staff recommends that the following revision of existing Section 1932 be included in the draft recommendation:

§ 1932 (amended). Condemnation of wildlife conservation easement

1932. There is hereby established the Significant Natural Areas Program, which shall be administered by the department. The department, in administering this program, shall do all of the following:

(a) Obtain access to the most recent information with respect to natural resources. In order to accomplish this, the department shall maintain, expand, and keep current a data management system, designated the California Natural Diversity Data Base, designed to document information on these resources. That data shall be made available to interested parties on request.

(b) Develop and maintain a spatial data system that identifies those areas in the state that are most essential for maintaining habitat connectivity, including wildlife corridors and habitat linkages. This data should include information essential for evaluating the needs of wildlife species, ~~as defined in Section 89.5,~~ that require habitat connectivity for their long-term conservation, including distribution and movement patterns.

(c) As appropriate, develop and maintain the database by incorporating mapping products and data developed by other state agencies.

(d) Make all of the data sets, and associated analytical products, available to the public and other government entities.

(e) Ensure cost sharing by all who use the data management system and develop an appropriate schedule of compensation to be paid by individuals using the data management system, not to exceed the actual costs for use of the data management system.

(f) Ensure recognition of the state's most significant natural areas, including those affected by climate change. The department shall, after consultation with federal, state, and local agencies, education institutions, civic and public interest organizations, private organizations, landowners, and other private individuals, identify by means of periodic reports those natural areas deemed to be most significant.

(g) Seek the maintenance and perpetuation of the state's most significant natural areas for present and future generations in the most feasible manner. The department shall consider alternative approaches for that maintenance, including alternatives to fee acquisition such as incentives, leasing, and dedication.

(h) Reduce unnecessary duplication of effort. The department shall provide coordinating services to federal, state, local, and private interests wishing to aid in the maintenance and perpetuation of significant natural areas.

(i) Actively pursue grants and cost-sharing opportunities with local, state, or federal agencies, or private entities that use the data sets and benefit from their creation and maintenance.

Comment. Subdivision (b) of Section 1932 is amended to delete the phrase “as defined in Section 89.5” as superfluous. See Section 89.5 (defining the term “wildlife” generally).

The introductory paragraph of the section is also amended to correct a technical error.

Proposed Section 54835 (Existing Section 1348.3)

Proposed Section 54835 would continue parts of existing Section 1348.3.

A Commission Note following the proposed section indicated that a provision of the existing section referencing a generally applicable definition of the term “wildlife” in another existing code section would not be continued in the proposed law.

DFW concurred with the deletion of the definitional provision from existing Section 1348.3. FGC did not respond to the Note.

The staff recommends that the following revision of existing Section 1348.3 be included in the draft recommendation:

§ 1348.3 (amended). Condemnation of wildlife conservation easement

1348.3. (a) No governmental entity may condemn any wildlife conservation easement acquired by a state agency, except as provided in subdivision (b). As used in this section, the following terms have the following meanings:

(1) “Public use” as used in Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure means privately owned lands managed for habitat in public trust.

~~(2) “Wildlife” has the same meaning as set forth in Section 89.5.~~

(3) (2) “Wildlife conservation easement” means a recorded conservation easement, as defined in Section 815.1 of the Civil Code, that exists or will exist for at least 10 years and that is acquired and held by a state agency and administered primarily for the benefit of wildlife.

(b) Prior to the initiation by a governmental entity of condemnation proceedings against a wildlife conservation easement acquired by a state agency, the governmental entity shall give notice

to the holder of the easement, provide an opportunity for the holder of the easement to consult with the governmental agency, provide the holder of the easement the opportunity to state its objections to the condemnation, and provide a response to the objections. Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure shall apply to condemnation proceedings initiated by a governmental entity against a wildlife conservation easement acquired by a state agency. In those proceedings, the condemning governmental entity shall be required to prove by clear and convincing evidence that its proposed use satisfies the requirements of Article 6 (commencing with Section 1240.510) or Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure.

Comment. Section 1348.3 is amended to delete paragraph (2) of subdivision (a) as superfluous. See Section 89.5 (defining the term “wildlife” generally).

Proposed Section 54875 (Existing Section 1352)

Proposed Section 54875 would continue existing Section 1352.

A Commission Note following the proposed section noted that a sentence in the section required action in 1979, and invited comment on whether the sentence could be deleted as obsolete.

DFW advised that the sentence is obsolete and can be deleted from the existing section. FGC did not respond to the Note.

The staff recommends that the following revision of existing Section 1352 be included in the draft recommendation:

§ 1352 (amended). Wildlife restoration fund

1352. (a) The money in the Wildlife Restoration Fund, as provided for by Section 19632 of the Business and Professions Code, is available for expenditure under any provision of this chapter.

(b) All federal moneys made available for projects authorized by the board shall be deposited in the Wildlife Restoration Fund or the Fish and Game Preservation Fund. ~~Any unexpended balances of the federal moneys remaining on or after June 30, 1979, in any other fund shall be transferred to the Wildlife Restoration Fund or the Fish and Game Preservation Fund.~~

(c) Any moneys received in the Wildlife Restoration Fund or the Fish and Game Preservation Fund from leases authorized pursuant to paragraph (2) or (3) of subdivision (c) of Section 1348 shall be expended, upon appropriation by the Legislature, by the department

for the purposes of managing, maintaining, restoring, or operating lands owned and managed by the department.

Comment. Subdivision (b) of Section 1352 is amended to delete the second sentence of the subdivision, which is obsolete.

Proposed Section 66210 (Existing Section 711.4(c)(2))

Proposed Section 66210 would continue existing Section 711.4(c)(2).

A Note following the proposed section invited comment on how to correct a repealed cross-reference in Section 711.4(c)(2)(C)(vi). DFW advised that the provision containing the cross-reference no longer has any application, and could be deleted from the section. FGC did not respond to the Note.

The staff recommends that the following revision of existing Section 711.4 be included in the draft recommendation:⁷

§ 711.4 (amended). Exceptions to CEQA filing fee

711.4. (a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act.

(b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified. The department shall annually adjust the fees pursuant to Section 713.

(c)(1) All project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project, as specified in subdivision (d).

(2) Notwithstanding paragraph (1), a filing fee shall not be paid pursuant to this section if any of the following conditions exist:

(A) The project has no effect on fish and wildlife.

(B) The project is being undertaken by the department.

7. This recommendation also includes a proposed revision of subdivision (f) of Section 711.4 that was previously found by the Commission to be presumptively correct (see discussion of proposed Section 6250 in Memorandum 21-26, p. 10), and has since been approved for inclusion in the draft recommendation by DFW counsel.

(C) The project costs are payable by the department from any of the following sources that are held by the department:

(i) The Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(ii) The California Wildlife, Coastal, and Park Land Conservation Fund of 1988.

(iii) The Habitat Conservation Fund.

(iv) The Fisheries Restoration Account in the Fish and Game Preservation Fund.

(v) The Commercial Salmon Stamp Dedicated Subaccount in the Fish and Game Preservation Fund.

~~(vi) Striped bass stamp funds collected pursuant to Section 7360.~~

~~(vii)~~ (vi) The California Ocean Resource Enhancement Account.

(D) The project is implemented by the department through a contract with either a nonprofit entity or a local government agency.

(3) Filing fees shall be paid at the time and in the amount specified in subdivision (d). Notwithstanding Sections 21080.5 and 21081 of the Public Resources Code, a project shall not be operative, vested, or final, and local government permits for the project shall not be valid, until the filing fees required pursuant to this section are paid.

(d) The fees shall be in the following amounts:

(1) For a project that is statutorily or categorically exempt from the California Environmental Quality Act, including those certified regulatory programs that incorporate statutory and categorical exemptions, a filing fee shall not be paid.

(2) For a project for which a negative declaration is prepared pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the filing fee is one thousand eight hundred dollars (\$1,800). A local agency collecting the filing fee shall remit the fee to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code. A state agency collecting the filing fee shall remit the fee to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of the Public Resources Code.

(3) For a project with an environmental impact report prepared pursuant to the California Environmental Quality Act, the filing fee is two thousand five hundred dollars (\$2,500). A local agency collecting the filing fee shall remit the fee to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code. A state agency collecting the filing fee shall remit the fee to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of the Public Resources Code.

(4) For a project that is subject to a certified regulatory program pursuant to Section 21080.5 of the Public Resources Code, the filing

fee is eight hundred fifty dollars (\$850). The filing fee shall be paid to the department before the filing of the notice of determination pursuant to Section 21080.5 of the Public Resources Code.

(e) The county clerk may charge a documentary handling fee of fifty dollars (\$50) per filing in addition to the filing fee specified in subdivision (d).

(1) The county clerk of each county and the Office of Planning and Research shall maintain a record, both electronic and in paper, of all environmental documents received. The record shall include, for each environmental document received, the name of each applicant or lead agency, the document filing number, the project name as approved by the lead agency, and the filing date. The record shall be made available for examination or audit by authorized personnel of the department during normal business hours.

(2) The filing fee imposed and collected pursuant to subdivision (d) shall be remitted monthly to the department within 30 days after the end of each month. The remittance shall be accompanied with the information required pursuant to paragraph (1). The amount of fees due shall be reported on forms prescribed and provided by the department.

(3) The department shall assess a penalty of 10 percent of the amount of fees due for a failure to remit the amount payable when due. The department may pursue collection of delinquent fees through the Controller's office pursuant to Section 12419.5 of the Government Code.

(f) Notwithstanding subdivision (a) of Section 12000, failure to pay the fee under subdivision (d) is not a misdemeanor. All unpaid fees are a statutory assessment subject to collection under procedures as provided in the Revenue and Taxation Code.

(g) Only one filing fee shall be paid for each project unless the project is tiered or phased, or separate environmental documents are required.

(h) This section does not preclude or modify the duty of the department to recommend, require, permit, or engage in mitigation activities pursuant to the California Environmental Quality Act.

(i) The permit process of the California Coastal Commission, as certified by the Secretary of the Resources Agency, is exempt from the payment of the filing fees prescribed by paragraph (4) of subdivision (d) insofar as the permits are issued under any of the following regulations:

(1) Subchapter 4 (commencing with Section 13136) of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations.

(2) Subchapter 1 (commencing with Section 13200), Subchapter 3 (commencing with Section 13213), Subchapter 3.5 (commencing with Section 13214), Subchapter 4 (commencing with Section 13215), Subchapter 4.5 (commencing with Section 13238), Subchapter 5

(commencing with Section 13240), Subchapter 6 (commencing with Section 13250), and Subchapter 8 (commencing with Section 13255.0) of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations.

Comment. Subparagraph (vi) of subdivision (c)(2)(C) of Section 711.4 is deleted to reflect the repeal of the statutory cross-reference in the provision, and the discontinuation of the referenced collection of funds.

Subdivision (f) is amended to clarify a statutory cross-reference.

“Follow-up” Items

*Proposed Sections 5344, 30000, 30005, 30010, and 30015 (Existing Section 3801.6)*⁸

Proposed Sections 5344, 30000, 30005, 30010, and 30015 would together restate and continue existing Section 3801.6.

Commission Notes following proposed Sections 30010 and 5344 invited comment, respectively, on proposed revisions of subdivisions (b) and (c) of existing Section 3801.6.⁹

In response to the Notes, both entities expressed a concern that proposed revision of the third sentence of Section 3801.6(b)(2) would cause a significant substantive change,¹⁰ but agreed that the proposed revision to Section 3801.6(c) would not do so, and expressed no objection to any other revision of the existing section.

Commission staff requested further input to discuss the entities’ concerns about the revisions proposed to the third sentence of Section 3801.6(b)(2).

Following that discussion and consistent with the entity comments above, the staff recommends that the following revision of existing Section 3801.6 be included in the draft recommendation:

§ 3801.6 (amended). Possession of parts of nongame bird

3801.6. (a) Except as otherwise provided in this code or regulations ~~made pursuant thereto~~ adopted pursuant to this code, it is unlawful to possess the carcass, skin, or ~~parts~~ other part of any

8. Proposed Section 5344 was previously presented to the Commission with a recommendation that proposed changes be treated as presumptively correct. See Memorandum 2021-26, p. 8. Proposed Section 30010 was previously presented to the Commission with an indication that the staff would seek further input from the entities relating to the revision, and report back to the Commission after doing so. See First Supplement to Memorandum 2021-39, p. 15.

9. Proposed Sections 30000, 30005, and 30015 included only nonsubstantive stylistic revision to provisions in Section 3801.6, and therefore were not followed by a Commission Note.

10. This sentence, unrevised, appears in redesignated paragraph (4) of subdivision (b) of Section 3801.6 in the proposed revision below.

nongame bird. The feathers, carcass, skin, or parts of any nongame bird possessed by any person in violation of any of the provisions of this code shall be seized by the department and delivered to a California Native American tribal government or a scientific or educational institution, used by the department, or destroyed.

(b)(1) It shall be an affirmative defense to a violation of this section if the possessor of feathers, carcass, skin, or ~~parts other part~~ of a nongame bird legally acquired the feathers, carcass, skin, or ~~parts other part~~, possesses them for tribal, cultural, or spiritual purposes, and satisfies either of the following criteria:

(A) The possessor is an enrolled member of a federally recognized Native American tribe or nonfederally recognized California Native American tribe listed on the California Tribal Consultation List maintained by the Native American Heritage Commission ~~who and~~ has, in ~~his or her~~ their immediate possession, valid tribal identification or other irrefutable proof of current enrollment.

(B) The possessor has a certificate of degree of Indian blood issued by the United States Bureau of Indian Affairs in ~~his or her~~ their immediate possession.

(2) Nothing in this section allows any person to sell the feathers, carcass, skin, or other part of a nongame bird ~~feathers, carcasses, skins, or parts. Native Americans meeting the .~~

(3) A Native American satisfying the criteria that would constitute an affirmative defense requirements under paragraph (1) may salvage dead nongame birds so long as the person salvaging ~~these birds~~ the nongame bird does not possess, nor is in the company of any person who possesses, a firearm, BB device as defined in Section 16250 of the Penal Code, trap, snare, net archery equipment, device capable of discharging a projectile, or any apparatus designed to take ~~birds~~ a bird.

(4) Salvaging shall not take place by any person involved in the take of the nongame bird to be salvaged, any person present at the time of the take, or by any person who received related information originating from any person present at the time of the take of the nongame bird.

(5) Salvaging pursuant to this subdivision shall not take place if a bird has been struck with any thrown or discharged projectile, or trapped, netted, caught, or snared.

(c) Notwithstanding subdivisions (a) and (b), ~~any~~ an officer deputized pursuant to this code may interrupt ~~any~~ an ongoing salvaging of a dead nongame carcasses, feathers, skins, or parts bird carcass, feathers, skin, or part if, in the officer's judgment, the activity causes a public disruption, safety hazard, or is detrimental to the ability of the department to prevent a possible violation of this section. ~~The~~ In that event, the officer may seize ~~any of the salvaged~~

~~feathers, carcasses, skins, or parts and has the option of returning them~~ the carcass, feathers, skin, or part being salvaged, or may return the carcass, feathers, skin, or part to the general location from where they were it had been salvaged.

Comment. Section 3801.6 is amended to clarify the intended meaning of the section.

Proposed Sections 29200 and 29215 (Existing Section 356)¹¹

Proposed Sections 29200 and 29215 would together restate and continue existing Section 356.

Commission Notes following each of the proposed sections invited comment on the proposed revisions of the existing section. As it was not clear to staff how to reconcile responses received from both entities, the staff recommended that it seek further input from the two entities on the issues presented.

Based on receipt of that input, **the staff recommends that the following revision of existing Section 356 be included in the draft recommendation:**

§ 356 (amended). Commission regulations relating to migratory birds

356. (a) Migratory game birds may be taken in conformity with ~~the~~ federal laws and regulations and the regulations of the commission as ~~provided in Section 355~~ adopted pursuant to this article.

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

Comment. Section 356 is amended to clarify the intended meaning of the section. The section is also amended to add subdivision designations.

11. Proposed Sections 29200 and 29215 were previously presented to the Commission with an indication that the staff sought further input from the entities relating to their comments, and would report back to the Commission after doing so. See First Supplement to Memorandum 2021-39, pp. 13-14.

*Proposed Sections 31500, 31510, and 31550 (Existing Section 3960)*¹²

Proposed Sections 31500, 31510 and 31550 would together restate and continue existing Section 3960.

Revisions to Section 3960(a) and (b) in proposed Sections 31500 and 31510 were considered and set aside in earlier memoranda.¹³

A Commission Note following proposed Section 31550 invited comment on proposed revision of existing Section 3960(c).

In response to the Note and in subsequent discussion, DFW expressed that other than the addition of a new clause it believed was unnecessary, the proposed revision to Section 3960(c) would cause no substantive change to the section. FGC did not comment on the Note.

Based on receipt of that input, **the staff recommends that the following revision of existing Section 3960 be included in the draft recommendation:**

§ 3960 (amended). Possession of parts of nongame bird

3960. (a) As used in this section:

(1) "Pursue" means pursue, run, or chase.

(2) "Bear" means any black bear (*Ursus americanus*) found in the wild in this state.

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

(c) ~~(1)~~ The department may take any of the following actions:

~~(A)~~ (1) Capture any dog not under the reasonable control of its owner or handler, when that uncontrolled dog is pursuing, in violation of this section, any of the following mammals:

(A) A big game mammal, ~~any~~ .

(B) A bear or bobcat, ~~or any~~ .

(C) A fully protected, rare, or endangered mammal.

~~(B)~~ (2) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any of the following mammals, under the specified conditions:

(A) A big game mammal, during the closed season on that mammal, ~~and the department may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury on any~~ .

12. Proposed Section 31550 was previously presented to the Commission with an indication that the staff would seek further input from the entities relating to the revision, and report back to the Commission after doing so. See Memorandum 2021-39, p. 16.

13. See First Supplement to Memorandum 2021-39, pp. 20, 21.

- ~~(B) A bear or bobcat, at any time, or any .~~
~~(C) A fully protected, rare, or endangered mammal, at any time.~~
~~(C) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any~~
(D) A mammal in a game refuge or ecological reserve, if hunting within that refuge or ecological reserve is unlawful.
~~(2) (d) No criminal or civil liability shall accrue to any department employee as a result of enforcement of this section.~~
~~(3) (e) This section does not apply to the use of dogs to pursue bears or bobcats by federal, state, or local law enforcement officers, or their agents or employees, when carrying out official duties as required by law.~~
~~(4) Owners of dogs with~~ (f) If a dog captured or dispatched pursuant to this section has identification, that have been captured or dispatched, its owner shall be notified within 72 hours after capture or dispatch.

Comment. Section 3960 is amended to clarify the intended meaning of the section.

CHANGES THAT SHOULD NOT BE MADE

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

This entire section of the memorandum will also 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 600 (Existing Section 90)

Proposed Section 600 would clarify the application of definitions referenced in existing Section 90. In a Note following the proposed section, the Commission invited comment on the proposed clarification.

DFW has expressed that the proposed clarification is beyond the scope of current "Phase One" review, because it is based in part on a reorganization of the existing code. FGC did not respond to the Note.

The staff recommends no revision of the existing section at this time.

Proposed Sections 15605 and 15615 (Existing Section 8601.5)¹⁴

Proposed Section 15605 would continue a part of existing Section 8601.5, a section addressing the use of commercial fishing nets and lines. The existing section refers to a “fisherman’s identification number” in a manner that makes less than clear (1) what “identification number” is being referred to, and (2) whether the identification number referred to is that of the *owner* of the net or line, or the fisherman presently *using* the net or line.

In a Note following the proposed section, the Commission invited clarification of these references. Both commenters expressed that the term “fisherman’s identification number” is intended to refer to a commercial fishing license identification number, and that the quoted phrase was meant to refer to the person fishing with the net or line.

In response to further inquiry from staff, DFW suggested that clarification of these issues might have implications beyond interpretation of this section based on use of this same term in other code sections,¹⁵ and suggested that no revision of Section 8601.5 be proposed.

The staff recommends no revision of the existing section at this time.

Proposed Section 52505 (Existing Sections 6881, 6882, and 6884)

Proposed Section 52505 would combine and restate existing Sections 6881, 6882, and 6884.

A Note following the proposed section invited comment on whether the proposed combination and restatement of these provisions would cause any substantive change in their meaning.

DFW has expressed that the restatement of Section 6882 would cause a significant substantive change to the meaning of that section. FGC did not respond to the Note.

The staff recommends no revision of the existing sections at this time.

FURTHER INPUT REQUIRED

The staff believes that further information is required before resolving the treatment of the proposed revisions described below. The staff will work with the

14. Proposed Sections 15605 and 15615 were previously presented to the Commission with an indication that the staff sought further input from the entities relating to their comments, and would report back to the Commission after doing so. See Memorandum 2021-39, p. 17.

15. See existing Sections 8043, 8664.8, 9029.

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 66250 (Existing Section 711.7(a)-(d))

Proposed Section 66250 would continue existing Section 711.7(a)-(d), a 1990 section relating to fish and wildlife resources.

Although no revision to the existing section was proposed in the tentative recommendation, a Note following the proposed section pointed out the possible overbreadth of a directive in the section that “all federal agencies acting in their proprietary capacity, to the extent permitted by federal law,” were to be governed by the statutory article in which Section 711.7 appears. The article contains 26 sections, some quite lengthy, addressing many different subjects, and many were added to the article or were amended well after 1990.

The staff suggested that only one other section in the article, Section 711.4, appeared relevant to the matters addressed by Section 711.7, and invited comment on a revision that would limit the cross reference to Section 711.4.

The intended meaning of DFW’s response to the inquiry is unclear to the staff, as it indicates that DFW “agrees that the references in sec. 711.4 to ‘this article’ are correct.” FGC did not comment on the Note.

The staff recommends that it further discuss this proposed section with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.

NO FURTHER ACTION RECOMMENDED

This part of the memorandum addresses revisions inquired about in the tentative recommendation for which the staff has concluded, after considering public comment or based on subsequent legislative developments, that there is insufficient evidence of a problem to justify making the described change.

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 Section 440 (Existing Section 57)

Proposed Section 440 was intended to reconcile the definition of the term “nonresident” in existing Section 57 with the definition of the term “resident” in existing Section 70. However, the proposed revision to the existing section has since been adopted by the Legislature in a separate legislative enactment.¹⁶

The staff therefore recommends no further action relating to this provision at this time.

Proposed Sections 5802 and 5804 (Existing Sections 12009 and 12006.6)¹⁷

Proposed Sections 5802 and 5804 would continue existing Sections 12009 and 12006.6, respectively, which each specify punishment under different circumstances for the prohibited take of abalone.

A Note following the proposed sections invited comment on the interrelationship of the punishments specified by the two existing sections.

Both entities expressed the view that each section was intended to impose separate and distinct penalties, which could be applied individually or cumulatively if the circumstance described in the corresponding section existed. Neither entity expressed that either section was in need of clarification.

Based on this responsive comment, the staff recommends no revision of either existing section at this time.

Proposed Section 14615 (Existing Section 7850(c))¹⁸

The second sentence of existing Section 7850(c) provides that any person or business entity may pay the fees for another person’s commercial fishing license. Proposed Section 14615 would generalize that provision to apply to any commercial fishing entitlement (such as a stamp, permit, or enhancement validation).

A Note following the proposed section invited comment on the revision. DFW agreed that the application could be extended as indicated. FGC offered no comment on the Note.

16. See 2015 Cal. Stat. ch. 154.

17. These proposed sections were previously presented to the Commission with an indication that the staff would seek further input from the entities and report back to the Commission after doing so. See Memorandum 2021-26, p. 14.

18. Proposed Section 14615 was previously presented to the Commission with an indication that the staff would seek further input from the entities, and report back to the Commission after doing so. See First Supplement to Memorandum 2021-26, p. 17.

However, Commission staff recognized that implementation of the revision in the existing code would require identifying every provision in that code identifying a commercial fishing entitlement, and so sought further input from the entities regarding implementation. After further discussion about the issue, DFW counsel felt the benefit that would be gained by making express what was already an existing practice was outweighed by the risk of error in implementation, and recommended against the revision.

Based on this responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 15400 (Existing Section 8630)¹⁹

Proposed Section 15400 would continue the first paragraph of existing Section 8630.

A Note following the section pointed out a possible inconsistency in that first paragraph of the section.²⁰ While the first sentence of the paragraph characterizes any “net or trap” used for taking fish in violation of the code as a public nuisance, its second sentence charges any person making an arrest for a violation of the section with a duty to seize and keep only “the net.” The Note invited comment on whether or how to reconcile this usage.

Both entities responded with an indication that the reference in the first sentence to a “trap” could be deleted. However, because other sections in the statutory article presented a similar inconsistency, staff requested further input from the commenters relating to selective revision of only the first section of the article. After further discussion, DFW counsel concluded that treatment of the issue in the context of this study would be too complicated.

Based on that responsive comment, the staff recommends no revision of the existing section at this time.

19. Proposed Section 15400 was previously presented to the Commission with an indication that the staff would seek further input from the entities, and report back to the Commission after doing so. See Memorandum 2021-39, p. 17.

20. This arguable inconsistency also appears elsewhere in the article in which Section 8630 appears. The inconsistency may be attributable to another existing section, Section 9008, which provides that with one exception, traps used in violation of the code constitute public nuisances that “shall be seized pursuant to Article 3 (commencing with Section 8630) of Chapter 3.”

Proposed Section 19225 (Existing Section 9005)²¹

Proposed Section 19225 would continue existing Section 9005, a section relating to the marking of traps.

In a Note following the proposed section, the Commission invited comment on whether the section was intended to apply to fishing gear other than traps, and if so, whether a relocation of the section outside an article governing only traps might be appropriate.

DFW responded by indicating that one sentence of the existing section was intended to also have application to gear other than traps, and wouldn't be opposed to relocating that sentence. However, while FGC agreed that the application of that sentence was ambiguous, it felt that relocation of the sentence could cause an unintended substantive change.

Based on the differing views expressed by the two entities, Commission staff sought further input on the issue. After further discussion, DFW counsel indicated DFW was content to defer to FGC's position.

Based on this responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 19900 (Existing Section 8614)²²

Proposed Section 19900 would continue existing Section 8614. Section 8614 in part addresses the revocation or nonrenewal of an "experimental permit" relating to alternative fishing gear, but mentions no statutory authority for the issuance of such permits.

At the time Section 8614 was last amended in 1991,²³ Section 8606, located in the statutory article preceding Section 8614, described and provided authorization for the issuance of experimental gear permits. In 2018, Section 8606 was repealed by a bill authorizing a new statutory protocol for the issuance of these experimental permits, pursuant to newly enacted Section 1022.²⁴

A Note following proposed Section 19900 invited comment on whether Section 8614 should be revised, in light of the repeal of Section 8606. However, the Note

21. Proposed Section 19225 was previously presented to the Commission with an indication that the staff would seek further input from the entities, and report back to the Commission after doing so. See Memorandum 2021-39, p. 17.

22. Proposed Section 19900 was previously presented to the Commission with an indication that the staff would seek further input from the entities, and would report back to the Commission after doing so. See Memorandum 2021-39, p. 18.

23. See 1991 Cal. Stat. ch. 677.

24. See 2018 Cal. Stat. ch. 477.

was inadvertently abbreviated, and failed to explain the relationship of Section 8606 to Section 8614.

DFW initially responded to the inquiry by expressing the Note might be in error, as Section 8606 was not mentioned in Section 8614. FGC did not respond to the Note.

Staff subsequently met with DFW counsel to elaborate on the substance of the Note, and inquire whether some revision to Section 8614 might be appropriate. DFW expressed that any revision might cause an undesirable substantive change in the intended meaning of the section.

Based on this responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 23615 (Existing Section 7852.25)²⁵

Proposed Section 23615 would continue existing Section 7852.25, a section addressing aquiculture entitlements sought by persons who had previously issued a dishonored check to DFW.

A Note following the proposed section invited comment on whether the application of the existing section should be expanded to apply to commercial fishing vessel registrations. Neither entity responded to the Note, which may have been due to a typographical error impacting the presentation of the Note.

Commission staff requested further input from the entities, at which time DFW expressed a belief that the suggested expansion was already adequately addressed by other code sections.

Based on this responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 24220 (Existing Section 15406.7)²⁶

Proposed Section 24220 would continue existing Section 15406.7, a section relating to oyster leases. The proposed section would revise two references in the existing section to a “privilege tax,” an antiquated and possibly misleading term when used in this context,²⁷ to instead refer to a “privilege fee.”

25. Proposed Section 23615 was previously presented to the Commission with an indication that the staff would seek further input from the entities and would report back to the Commission after doing so. See Memorandum 2021-39, p. 19.

26. Proposed Section 24220 was previously presented to the Commission with an indication that the staff would seek further input from the entities and would report back to the Commission after doing so. See Memorandum 2021-26, p. 20.

27. See Memorandum 2016-34, pp. 2-6.

A Note following the proposed section invited comment on those proposed revisions.

DFW indicated it believed the use of the term “privilege fee” was appropriate. However, FGC noted that “privilege fee” would be a novel term not used anywhere else in the code, and felt its use could create undesirable substantive change.

Commission staff requested further input to resolve the differing views of the two entities. DFW counsel subsequently requested that the Commission retain the existing language.

Based on this responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 53803 (Existing Section 1901, 2nd sentence)

Proposed Section 53803 would continue the second sentence of existing Section 1901, which defines the term “native plant” as used in the chapter in which Section 1901 appears.

A Note following the proposed section pointed out that several other identified sections outside the article containing Section 1901 used the term “native plant” without definition, and invited comment on whether the application of the definition in Section 1901 should be expanded to include some or all of those sections.

DFW indicates that definition might be appropriately made applicable to some of the identified sections, but would be potentially problematic if made applicable to two others. DFW also pointed out that expanding the application of the definition would likely involve reorganization of the existing code, and beyond the scope of this phase of this study. FGC did not respond to the Note.

Based on the comment offered by DFW, the staff recommends no revision of the existing section at this time.

Proposed Section 54855 (Existing Section 1350(a))

Proposed Section 54835 would continue existing Section 1350(a).

A Commission Note following the proposed section identified what appeared to staff to be an erroneous cross-reference in the existing section, and invited comment on how to address the issue.

Since the circulation of the tentative recommendation, the cross-reference was corrected in a 2020 amendment of the existing section.²⁸

In light of that amendment, the staff recommends no revision of the existing section at this time.

Proposed Section 58015 (Existing Section 711.1(d))

Proposed Section 58015 would continue existing Section 711.1(d), but would narrow statutory cross-references in the section to only the parts of the cross-referenced sections that appeared relevant to the existing section.

A Note following the section invited comment on whether that narrowing was problematic. DFW expressed that the narrowing was unneeded. FGC did not respond to the Note.

Based on the comment offered by DFW, the staff recommends no revision of the existing section at this time.

Proposed Section 66245 (Existing Section 711.4(i))

Proposed Section 66245 would continue existing Section 711.4(i).

A Note following the proposed section indicated that the proposed section would correct what the staff believed to be an erroneous cross-reference in the existing section, incorrectly identifying the first section of a referenced subchapter of the California Code of Regulations.

In response, DFW pointed out that the parenthetical cross-reference is in fact correct, based on repeal of other sections in that subchapter. FGC did not comment on the Note.

Based on the comment offered by DFW, the staff recommends no revision of the existing section at this time.

NOTES NOT CALLING FOR REVISION AT THIS TIME

The tentative recommendation included Notes relating to the provisions listed below that merely explain the legislative status of the provision, or discuss a proposed revision that is primarily based on recodification of the existing code and therefore not being presented to the Commission at this time. For completeness, the provisions preceding these Notes are listed below, but the

28. See 2021 Cal. Stat. ch. 701.

subject matter of the Notes will not be discussed further in this memorandum (unless a Commissioner or commenter raises an issue).

- **Proposed Section 48320 (Existing Section 8280.3(d))**
- **Proposed Section 48325 (Existing Section 8280.3(f))**
- **Proposed Section 48330 (Existing Section 8280.3(e))**
- **Proposed Section 48335 (Existing Section 8280.3(g))**
- **Proposed Section 48340 (Existing Section 8280.3(h))**
- **Proposed Section 48355 (Existing Section 8280.3(a), (k))**
- **Proposed Section 48360 (Existing Section 8280.3(l), 8280.6(d))**
- **Proposed Section 48500 (Existing Section 8280)**
- **Proposed Section 52200 (Existing Section 5050(a))**
- **Proposed Section 53000 (Existing Section 5050(a))**
- **Proposed Section 55000 (Existing Section 1374(a)-(d))**
- **Proposed Section 55005 (Existing Section 1374(e))**
- **Proposed Section 55010 (Existing Section 1374.1)**
- **Proposed Section 55500 (Existing Section 2600)**
- **Proposed Section 55800 (Existing Section 2780)**
- **Proposed Section 57790 (Existing Section 3469(f))**
- **Proposed Section 57795 (Existing Section 3469(a))**
- **Proposed Section 57800 (Existing Section 3469(b)-(c))**
- **Proposed Section 57805 (Existing Section 3469(d))**
- **Proposed Section 57810 (Existing Section 3469(e))**
- **Proposed Section 57820 (Existing Section 3469.2)**
- **Proposed Section 57825 (Existing Section 3469.4)**
- **Proposed Section 57830 (Existing Section 3469.6)**
- **Proposed Section 57835 (Existing Section 3469.8)**
- **Proposed Section 57855 (Existing Section 3480(a), (e), & (g))**
- **Proposed Section 57860 (Existing Section 3480(h))**
- **Proposed Section 57865 (Existing Section 3480(i))**
- **Proposed Section 57870 (Existing Section 3480(b))**
- **Proposed Section 57875 (Existing Section 3480(c))**
- **Proposed Section 57880 (Existing Section 3480(d))**
- **Proposed Section 57885 (Existing Section 3480(f))**

- **Proposed Section 62200 (Existing Section 2070)**
- **Proposed Section 62285 (Existing Section 2073.4)**
- **Proposed Section 62475 (Existing Section 2075.5(e))**

Respectfully submitted,

Steve Cohen
Staff Counsel

PHASE ONE COMMENTS

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 2022-13.

| Proposed Section | Existing Section | Fish and Game Commission | Department of Fish and Wildlife |
|------------------|------------------|---|---|
| 440 | 57 | <p>(1) FGC believes that the revision has no problematic effect, though it is not clear what is meant by "...eliminate an overlap..." between the definition of "nonresident" in sec. 57 of Fish and Game Code and the definition of "resident" in sec. 70. There does not appear to be any overlap.</p> <p>(2) FGC supports the text change that makes sec. 70 gender neutral.</p> | <p>Assuming the reference in the Note to proposed sec. 660 should actually be proposed sec. 485, CDFW believes that sec. 57 does not need restatement. There is no overlap with the definition of "resident" in sec. 70. CDFW agrees that sec. 70 should be made gender neutral.</p> |
| 600 | 90 | No comment | <p>Two comments: (1) Informational only. No comment. (2) Moving the definitions of the terms relating to marine resources is beyond the scope of CDFW's review at this time because it deals with the overall reorganization of the code.</p> |
| 5344 | 3801.6 | 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. |
| 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. | <p>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".</p> |
| 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. |
| 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, |

| Proposed Section | Existing Section | Fish and Game Commission | Department of Fish and Wildlife |
|------------------|-------------------------------|--|---|
| | | | subdivision (a)." |
| 14615 | 7850(c), 2 nd sent | No comment | CDFW agrees that sec. 7850(c) second sentence could be extended to all commercial fishing entitlements. |
| 15400 | 8630 | FGC believes that existing sec. 8630, first paragraph, first sentence, can be amended to remove "or trap" as existing sec. 9008 makes clear the provisions in sec. 8630 that apply to nuisance nets also applies to nuisance traps. | Sec. 8630 first paragraph can be amended to remove "or trap." CDFW observes that the Note incorrectly states, "Existing Section 8630 initially refers to a 'net or trap,' but then only refers to a trap"; it actually then refers to a "net." |
| 15605 | 8601.5 | FGC believes that: (1) "fisherman's identification number" means the person's commercial fishing license identification number, and (2) "fisherman" in "fisherman's identification number" is not the owner of the net but, rather, the person fishing with the net. | Two comments: (1) CDFW agrees that "fisherman's identification number" means the person's commercial fishing license identification number. (2) "fisherman" in "fisherman's identification number" is not the owner of the net, but instead the person fishing with the net (using the language in sec. 8601.5(c)(5)). Sec. 8601.5(a)-(b) can be amended to replace "fisherman's identification number" with "commercial fishing license identification number of the person fishing with the net." |
| 15615 | 8601.5 | FGC believes that: (1) "fisherman's identification number" means the commercial fishing license identification number; thus, subdivisions 8601.5(c)(4) and (5) and sec. 8601.5(b), third sentence, can be amended to replace "fisherman's identification number" with "commercial fishing license identification number of the person fishing with the net." | CDFW agrees that "fisherman's identification number" means the commercial fishing license identification number. Sec. 8601.5(c)(4) and (5) and sec. 8601.5(b), third sentence can be amended to replace "fisherman's identification number" with "commercial fishing license identification number of the person fishing with the net." |
| 19225 | 9005 | CLRC note (1): No comment. CLRC note (2): FGC recognizes that the second sentence in sec. 9005 is potentially ambiguous. CLRC's suggestion to move the section out of its current context selects one interpretation that could be a significant change, without the benefit of a public dialogue with potentially affected parties and stakeholders. A broad interpretation could conflict with other Fish and Game Code sections—which currently grant authority for various fisheries to FGC—by transferring authority from FGC to CDFW; this interpretation could also have an impact on the interface between highly-valued fisheries and | Two comments. (1) Informational only. No comment. (2) The term "gear" was intended to be read broadly as including other kinds of gear including traps. Locating the sentence in a more generally applicable location, assuming that it was still limited to commercial fisheries, would be acceptable. |

| Proposed Section | Existing Section | Fish and Game Commission | Department of Fish and Wildlife |
|------------------|------------------|--|---|
| | | protecting species listed under the California Endangered Species Act, which is contentious. As a result, FGC believes that the suggested revision is outside the scope of the current review. | |
| 19900 | 8614 | FGC believes that CLRC's effort to comport the proposed sec. 19900(a) with changes to existing sec. 8614 is outside the scope of the current review. | CDFW believes CLRC's Note is erroneous: existing sec. 8614 does not reference sec. 8606. |
| 23615 | 7852.25 | No comment | No comment |
| 24220 | 15406.5 | <p>FGC believes that the proposed changes to the 2nd sentence of sec. 15406.5(a) do not cause a substantive effect.</p> <p>FGC believes that using the term "privilege fee" is novel and not used in any other California code; therefore, the term is new, and it is unclear whether the term is plainly beneficial or whether it would be controversial. Therefore, this change would be a significant substantive change. While the term "privilege tax" is antiquated and has been phased out of use by FGC, it is still in use in other California codes.</p> | CDFW believes that use of the term "fee" rather than "privilege tax" is appropriate. |
| 29200 | 356 (1st para.) | CLRC's note is outside the scope of the current review. Without reviewing the proposed change in the context of the Fish and Game Code reorganization into a new Fish and Wildlife Code, it may not be appropriate to reference the proposed title (Title 1) that may include other sections and/or subdivisions of Fish and Game Code that could affect or be affected by the change in reference. | CDFW believes that the reference in the first paragraph of sec. 356 should be changed from "Section 355" to "this article" so it includes the regulations that are authorized by the second paragraph of sec. 356. |
| 29215 | 356 (2nd para.) | <p>No comment</p> <p>However, DFW reports that in subsequent discussions, FGC is generally in agreement with the comments submitted by DFW relating to existing Section 356.</p> | Three comments. (1) The reference in the second paragraph of sec. 356 "such rules and regulations" refers to those adopted pursuant to sec. 356, not 355. (2) CDFW agrees that the term "rules and" can be deleted, but disagrees that "such" should be changed. "Such" helps make clear that the phrase refers to the regulations described immediately preceding it. (3) CDFW does not have a comment on the meaning and effect of the last sentence of sec. 356, but agrees that it should remain in the code. |
| 30010 | 3801.6 | FGC believes that the proposed restatement of the third sentence of sec. 3801.6(b)(2) would cause a substantive change in the meaning; the proposed language changes what are | The proposed restatement of the third sentence of sec. 3801.6(b)(2) would cause a significant substantive change in the meaning that is not beneficial because it changes an "or" to an "and" thereby |

| Proposed Section | Existing Section | Fish and Game Commission | Department of Fish and Wildlife |
|------------------|------------------------------------|--|--|
| | | currently three "or" statements of circumstance into two statements of circumstance joined with an "and," such that the third circumstance must be met in addition to the first and second. FGC believes the proposed restatement narrows who is prohibited from salvaging bird parts. Replacing the "and" with "or" would address the issue. | changing the people who are prohibited from salvaging bird parts. |
| 31500 | 3032, 3960, 3960.2, 3960.4, 3960.6 | CLRC note (1): The change in sections relating to the definitions of "bear" and "pursue" is beyond the scope of the current review. CLRC note (2): FGC cannot comment at this time on whether the definitions in sec. 3960 should apply beyond that section; identifying and reviewing all the sections where those terms are used requires greater capacity than FGC currently has available. FGC believes the proposal may lead to unintended consequences and, hence, be a significant substantive change. | Two comments: (1) CDFW is not commenting on the change in sections relating to the definitions of "bear" and "pursue" because it is beyond the scope of its review at this time. (CDFW is not addressing the overall recodification of the code.) (2) CDFW has no comment on whether the definitions in sec. 3960 should apply beyond that section because it has not identified all the sections where those terms are used. To do so would be overly burdensome and may be a significant substantive change that has unintended consequences. |
| 31510 | 3960 | No comment | Two comments: (1) The terms "permit" and "allow" are not synonymous in sec. 3960(b). "Unlawful to ... allow" means the activity is prohibited; "Unlawful to...permit" means that CDFW may not issue a permit or otherwise approve. (2) CDFW has not experienced problems with the definition of "big game" being in Title 14 rather than the code. If CLRC believes it is necessary to add a definition of "big game" or "big game mammal" it could do so either by reiterating the existing regulation's substantive content or by incorporating the regulation by reference. |
| 31550 | 3960 | No comment | Two comments: (1) Except as discussed in (2) below, CDFW believes that the restatement of subsections 3960(c)(1), (2) and (4) does not cause a substantive change in the meaning of that section. (2) CDFW believes sec. 3960(c)(1)(A) does not need to be amended to allow the department to capture uncontrolled dogs in ecological reserves/game refuges because it already allows CDFW to capture them anywhere; there is no geographic limitation in (c)(1)(A). |
| 48320 | 8280.3(d) | No comment | No comment |
| 48325 | 8280.3(f) | No comment | No comment |
| 48330 | 8280.3(e) | No comment | No comment |

| Proposed Section | Existing Section | Fish and Game Commission | Department of Fish and Wildlife |
|------------------|----------------------|--------------------------|--|
| 48335 | 8280.3(g) | No comment | No comment |
| 48340 | 8280.3(h) | No comment | No comment |
| 48355 | 8280.3(a), (k) | No comment | No comment |
| 48360 | 8280.3(l), 8280.6(d) | No comment | No comment |
| 48500 | 8280 | No comment | No comment |
| 52200 | 5050(a) | No comment | Note is informational only. No comment. |
| 52505 | 6881, 6882, 6884 | No comment | CDFW believes that the restatement of sec. 6882 causes a substantive change in the meaning by adding "in any manner". Further, sec. 6882 would cause a significant substantive change in the section by removing the conclusive presumption therein. This is very important for proof purposes in a prosecution. |
| 53000 | 5050(a) | No comment | Note is informational only. No comment. |
| 53803 | 1901 | No comment | CDFW generally agrees that for secs. 1580, 1755, 1760-1763, 1771, 1802 (assume 1802 and not 1801), 4181.1 (assume 4181.1 and not 4180), 10667, and 13014, using the definition for "native plant" in sec. 1901 is appropriate, although the reorganization of the code is beyond the scope of CDFW's review at this time. The definition contained in sec. 1901 is problematic for sec. 1925, because the Food and Agriculture Code already contains a definition for "native plant." As for using the definition of "native plant" in sec. 2781, CDFW has no comment on the Commission's authority to recodify a statute enacted by initiative. |
| 54585 | 1932 | No comment | CDFW recommends that the phrase "as defined in Section 89.5" be deleted from sec. 1932(b) because that section defines "wildlife" not "wildlife species" and sec. 89.5 already applies to the term "wildlife" wherever it is used in the code. |
| 54835 | 1348.3 | No comment | Sec. 1348.3(a)(2) can be deleted because it is superfluous since the definition of "wildlife" in sec. 89.5 already applies to this section. |
| 54855 | 1350(a) | No comment | Former Government Code sec. 14250 was repealed in 1981 and reenacted as the State Contract Act commencing at Public Contract Code sec. 10100. The erroneous cross reference can be corrected by changing the reference to identify the Public Contract Code section. |
| 54875 | 1352 | No comment | The second sentence of sec. 1352(b) can be repealed. Obsolete. |

| Proposed Section | Existing Section | Fish and Game Commission | Department of Fish and Wildlife |
|------------------|-------------------|--------------------------|---|
| 55000 | 1374(a)-(d) | No comment | Note is informational only. No comment. |
| 55005 | 1374(e) | No comment | Note is informational only. No comment. |
| 55010 | 1374.1 | No comment | Note is informational only. No comment. |
| 55500 | 2600 | No comment | Note is informational only. CDFW has no comment on the Commission's authority to recodify a statute enacted by initiative. |
| 55800 | 2780 | No comment | Note is informational only. CDFW has no comment on the Commission's authority to recodify a statute enacted by initiative. |
| 57790 | 3469(f) | No comment | Note is informational only. No comment. |
| 57795 | 3469(a) | No comment | Note is informational only. No comment. |
| 57800 | 3469(b)-(c) | No comment | Note is informational only. No comment. |
| 57805 | 3469(d) | No comment | Note is informational only. No comment. |
| 57810 | 3469(e) | No comment | Note is informational only. No comment. |
| 57820 | 3469.2 | No comment | Note is informational only. No comment. |
| 57825 | 3469.4 | No comment | Note is informational only. No comment. |
| 57830 | 3469.6 | No comment | Note is informational only. No comment. |
| 57835 | 3469.8 | No comment | Note is informational only. No comment. |
| 57855 | 3480(a), (e), (g) | No comment | Note is informational only. No comment. |
| 57860 | 3480(h) | No comment | Note is informational only. No comment. |
| 57865 | 3580(i) | No comment | Note is informational only. No comment. |
| 57870 | 3480(b) | No comment | Note is informational only. No comment. |
| 57875 | 3480(c) | No comment | Note is informational only. No comment. |
| 57880 | 3480(d) | No comment | Note is informational only. No comment. |
| 57885 | 3480(f) | No comment | Note is informational only. No comment. |
| 58015 | 711.1(d) | No comment | CDFW believes that the reference to secs. 3684, 3702.1 and 3953 in sec. 711.1(d) do not need to be narrowed because it is very clear in each section which advisory committees are being referred to. |
| 62200 | 2070 | No comment | Note is informational only. No comment. |
| 62285 | 2073.4 | No comment | Note is informational only. No comment. |
| 62475 | 2075.5 | No comment | Note is informational only. No comment. |
| 66210 | 711.4(c)(2) | No comment | Sec. 711.4(c)(2)(C)(vi) can be repealed. The requirement for a striped bass stamp has been repealed and the fund for that revenue has no more money to disburse. |

| Proposed Section | Existing Section | Fish and Game Commission | Department of Fish and Wildlife |
|------------------|------------------|--------------------------|---|
| 66245 | 711.4(l) | No comment | CDFW disagrees with this change. California Code of Regulations Title 14, sections 13211 and 13212 have both been repealed. Existing Section 711.4(i)'s current reference to "Subchapter 3 (commencing with Section 13213)" is correct. |
| 66250 | 711.7(a)-(d) | No comment | CDFW agrees that the references in sec. 711.4 to "this article" are correct. |