

Memorandum 2022-22

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, “FGC”), 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

The following proposed revisions were supported by one or both commenting entities, with neither opposing the change. The staff recommends that the revisions 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 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.

Proposed Section 54040 (Existing Section 6657)

Proposed Section 54040 would continue existing Section 6657, a 1957 statute that addresses the issuance of permits to harvest kelp.

The existing section refers to payment of a “privilege tax imposed by this chapter,” but there are no sections in the chapter in which the existing section is located that provide for the imposition of a “privilege tax.”⁷

A Commission Note following the proposed section suggested that the intended reference was likely to a “royalty” required by existing Section 6680 of that chapter, and invited comment on whether substitution of that term would be problematic.

Both entities agreed the substitution would be appropriate.

The staff recommends that the following revision of existing Section 6657 be included in the draft recommendation:

§ 6657 (amended). Scientific and educational permits

6657. The commission may, subject to such regulations as it may deem proper, grant permits to any department of the United States Government or to any scientific or any educational institution, to harvest kelp at any time for scientific or experimental purposes without the payment of the kelp license or ~~privilege tax~~ royalty imposed by this chapter.

Comment. Section 6657 is amended to more precisely describe the nature of payments referenced in the section. See Section 6680 (requiring payment of “royalty” for harvesting kelp).

7. The term “privilege tax” as used elsewhere in the code refers to a weight-based fee imposed on a commercial fisherman in connection with landing fish.

**Proposed Section 54105 (Existing Section 6704); Proposed Section 54120
(Existing Section 6707)**

Proposed Sections 54105 and 54120 would continue existing Sections 6704 and 6707, respectively. Both existing sections govern kelp bed leases “entered into or renewed, on and after January 1, 1985.”

A Commission Note following each proposed section invited comment on whether the quoted phrase in each existing section was now obsolete, and could be deleted.

Both entities agreed that the quoted text could be deleted from both existing sections as obsolete.

The staff recommends that the following revisions of existing Sections 6704 and 6707 be included in the draft recommendation:

§ 6704 (amended). Renewal of lease

6704. (a) Each kelp bed lease ~~entered into or renewed, on and after January 1, 1985,~~ shall specify a period prior to expiration when renewal of the lease may be requested by the lessee. If the commission determines that the lessee has complied with the terms of the lease, the lessee shall have a prior right to renew the lease on terms agreed upon between the commission and the lessee.

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

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

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

Comment. Subdivision (a) of Section 6704 is amended to delete an obsolete reference to a past qualifying date.

§ 6707 (amended). Royalty payment

6707. (a) Each lease ~~entered into, or renewed, on or after January 1, 1985,~~ shall require, in addition to the license fee required by this chapter, a payment by the lessee or any sublessee of not less than the minimum royalty established under Article 2 (commencing with Section 6680), for all kelp harvested from the lease area, and shall provide for an annual advance payment of not less than forty dollars (\$40) per square mile per year for the kelp bed leased, to be credited against the amount payable by the lessee, or sublessee, as the case may be, for each ton of kelp harvested during the ensuing year.

(b) The lease shall, in addition, include provisions for forfeiture of the lease if the annual payment is not made in advance.

Comment. Section 6707 is amended to delete an obsolete reference to a past qualifying date.

The section is also amended to add subdivision designations.

Proposed Section 54110 (Existing Section 6705)

Proposed Section 54110 would continue existing Section 6705, a section expressly applicable to kelp bed leases in effect on January 1, 1983, or on January 1, 1985.

A Commission Note following the proposed section noted that kelp bed leases are limited to 20-year terms,⁸ and invited comment on whether the existing section was obsolete.

Both entities advised that the existing section could be repealed as obsolete.

The staff recommends that a repeal of existing Section 6705 be included in the draft recommendation:

§ 6705 (repealed). Renewal of leases in effect on specified dates

~~6705. Notwithstanding Section 6704, with respect to any kelp lease in effect on January 1, 1983, the lessee shall have a prior right to renew the lease on terms agreed upon between the commission and the lessee. If the lessee does not renew the lease, or if terms are not agreed upon, the commission shall advertise for bids on the individual kelp beds comprising the lease. The term of any renewal of a lease shall not exceed 20 years. Any lease in effect on January 1, 1985, may be performed pursuant to its terms, notwithstanding this article, but any renewal of that lease is subject to this article.~~

Comment. Section 6705 is repealed as obsolete.

Proposed Section 54575 (Existing Section 1930.5(f))

Proposed Section 54575 would continue existing Section 1930.5(f)), a subdivision that defines two terms solely for purposes of the section in which the subdivision appears.

A Note following the proposed section pointed out that the defined terms are used in other sections in the same chapter in which the existing section appears, and invited comment on whether the definitions should be generalized to apply to the other sections in the chapter.

8. See Section 6703.

DFW agreed that the definitions should be generalized. FGC did not comment on the Note.

The staff recommends that this generalization be implemented by including in the draft recommendation (1) the following new section, which would appear near the beginning of the chapter containing Section 1930.5, along with the following revision of Section 1930.5:

§ 1930.2 (added). Definitions

1930.2. For purposes of this chapter, the following terms have the following meanings:

(a) "Habitat stronghold" means high-quality habitat that supports wildlife in being more resilient to increasing pressures on species due to climate change and land development.

(b) "Wildlife corridor" means a habitat linkage that joins two or more areas of wildlife habitat, allowing for fish passage or the movement of wildlife from one area to another.

Comment. Section 1930.2 is added to generalize application throughout this chapter of definitions previously applicable only to Section 1930.5.

§ 1930.5 (amended). Habitat strongholds and wildlife corridors

1930.5. (a) Contingent upon funding being provided by the Wildlife Conservation Board from moneys available pursuant to Section 75055 of the Public Resources Code, or from other appropriate bond funds, upon appropriation by the Legislature, the department shall investigate, study, and identify those areas in the state that are most essential as wildlife corridors and habitat linkages, as well as the impacts to those wildlife corridors from climate change, and shall prioritize vegetative data development in these areas.

(b) It is the intent of the Legislature that the Wildlife Conservation Board use various funds to work with the department to complete a statewide analysis of wildlife corridors and connectivity to support conservation planning and climate change adaptation activities.

(c)(1) It is the policy of the state to promote the voluntary protection of wildlife corridors and habitat strongholds in order to enhance the resiliency of wildlife and their habitats to climate change, protect biodiversity, and allow for the migration and movement of species by providing connectivity between habitat lands. In order to further these goals, it is the policy of the state to encourage, wherever feasible and practicable, voluntary steps to protect the functioning of wildlife corridors through various means,

as applicable and to the extent feasible and practicable, those means may include, but are not limited to:

(A) Acquisition or protection of wildlife corridors as open space through conservation easements.

(B) Installing of wildlife-friendly or directional fencing.

(C) Siting of mitigation and conservation banks in areas that provide habitat connectivity for affected fish and wildlife resources.

(D) Provision of roadway undercrossings, overpasses, oversized culverts, or bridges to allow for fish passage and the movement of wildlife between habitat areas.

(2) The fact that a project applicant does not take voluntary steps to protect the functioning of a wildlife corridor prior to initiating the application process for a project shall not be grounds for denying a permit or requiring additional mitigation beyond what would be required to mitigate project impacts under other applicable laws, including, but not limited to, the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3) and the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(d) The Legislature finds and declares that there are a number of existing efforts, including, but not limited to, efforts involving working landscapes, that are already working to achieve the policy described in subdivision (c).

(e) Subdivision (c) shall not be construed to create new regulatory requirements or modify the requirements of subparagraphs (B) and (E) of paragraph (4) of subdivision (a) of Section 2820 of the Fish and Game Code, or the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

~~(f) For purposes of this section, the following terms have the following meanings:~~

~~(1) "Habitat stronghold" means high quality habitat that supports wildlife in being more resilient to increasing pressures on species due to climate change and land development.~~

~~(2) "Wildlife corridor" means a habitat linkage that joins two or more areas of wildlife habitat, allowing for fish passage or the movement of wildlife from one area to another.~~

Comment. Section 1930.5 is amended to delete subdivision (f), which set forth definitions that have been generalized to apply throughout the chapter in which Section 1930.5 appears. See Section 1930.2.

Subdivision (e) is amended to make a technical change.

**Proposed Section 56105 (Existing Section 1771); Proposed Section 56110
(Existing Section 1772)**

Proposed Sections 56105 and 56110 would continue existing Sections 1771 and 1772, respectively. Both existing sections contain the same cross-reference to a nonexistent article in the Revenue and Taxation Code.

A Commission Note following each proposed section invited comment on how to correct the erroneous cross-reference.

DFW indicated its belief that both sections were intended to cross-refer to a different identified article in the Revenue and Taxation Code. FGC did not comment on either Note.

Based on the subject matter of the two existing sections, the staff concurs with DFW's suggested revision of the cross-reference.

The staff recommends that the following revisions of existing Sections 1771 and 1772 be included in the draft recommendation:

§ 1771 (amended). Deposit of funds

1771. (a) Whenever the department receives funds from the Treasurer under ~~Article 7 (commencing with Section 18520) of Chapter 17 of Part 10~~ Article 5 (commencing with Section 18741) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code for the support of this article, the funds shall be deposited in the Fish and Game Preservation Fund and credited to the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account. These funds are for the support of programs for endangered and rare animals and native plant species as determined by the commission, related conservation and enhancement programs, and programs for those species which may be candidates for determination as endangered or rare under the criteria developed by the commission.

(b) The administrative overhead assessment on that portion of funds deposited in the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account expended through contracts shall not exceed 15 percent.

Comment. Section 1771 is amended to correct an erroneous cross-reference.

§ 1772 (amended). Encouraging donations

1772. (a) The department may take all appropriate measures to encourage donations to this account through the tax return checkoff system provided for in ~~Article 7 (commencing with Section 18520) of Chapter 17 of Part 10~~ Article 5 (commencing with Section 18741) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(b) The department may also disseminate information to the public concerning the status of endangered and rare species.

(c) The cost to the department to carry out the provisions of this section may be charged to this account.

Comment. Section 1772 is amended to correct an erroneous cross-reference.

The section is also amended to add subdivision designations.

Proposed Section 56585 (Existing Section 3407)

Proposed Section 56585 would continue existing Section 3407.

A Commission Note following the proposed section invited comment on how to correct a cross-reference in the existing section to a nonexistent section of the California Code of Regulations.

Both entities identified the same section of the California Code of Regulations that it believed was the correct object of the cross-reference. Based on the text of the code section and the suggested regulation, the staff concurs with the revision suggested by both entities.

The staff recommends that the following revision of existing Section 3407 be included in the draft recommendation:

§ 3407 (amended). Marking of animal taken in area

3407. (a) The commission may require that any fish, bird, or mammal taken in a wildlife habitat enhancement and management area licensed pursuant to this article be marked for identification with a distinctive tag or seal issued by the department prior to being removed from the area.

(b) A deer tag shall be countersigned by a person who is authorized to countersign deer tags pursuant to Section ~~372~~ 708.6 of Title 14 of the California Code of Regulations.

(c) Any fish, bird, or mammal so identified may be possessed and transported at any time during the period for which the tag or seal is valid.

(d) The fees for tags and seals shall be established by the commission in amounts which, in conjunction with fees collected pursuant to Section 3402, are calculated to meet the actual costs incurred by the department in administering all aspects of the habitat enhancement and management program.

Comment. Section 3407 is amended to correct an erroneous cross-reference.

The section is also amended to add subdivision designations.

Proposed Section 56710 (Existing Section 3462); Proposed Section 56720 (Existing Section 3466)

Proposed Sections 56710 and 56720 would continue existing Sections 3462 and 3466, respectively. Although both sections appear in an article relating to implementation of the California Waterfowl Habitat Program, each refer to contracts entered into by the Director of Fish and Wildlife under the entire statutory division in which the existing sections appear.

As that division addresses an extremely broad range of subject matter, a Commission Note following each proposed section invited comment on whether the references to that division were erroneously overbroad, and if so how they should be revised.

DFW agreed that both references are overbroad, and suggested both sections can be revised to instead refer to the statutory article in which the sections appear. FGC did not comment on either Note.

The staff recommends that the following revisions of existing Sections 3462 and 3466 be included in the draft recommendation:

§ 3462 (amended). Recordation of contract

3462. (a) Not later than 20 days after the director has entered into a contract pursuant to this ~~division~~ article, a copy of the contract particularly describing the subject habitat as required by subdivision (a) of Section 3461 shall be recorded by the department in the office of the county recorder in each county in which any portion of the areas subject to the contract is located. The contract shall be indexed by the recorder in the grantor-grantee index to the name of the owner of record as grantor and to the department as grantee.

(b) Notwithstanding Section 27383 of the Government Code, the department shall pay the fees for recording and indexing the contract, and the department shall deduct the amount paid from the amounts due to the owner under the contract.

Comment. Section 3462 is amended to correct an erroneous cross-reference.

§ 3466 (amended). Modification of terms

3466. The director and the owner or lessee may mutually agree to modify the terms and conditions of a contract under this ~~division~~ article as the director may determine to be desirable to carry out the purposes of, or to facilitate administration of, the program.

Comment. Section 3466 is amended to correct an erroneous cross-reference.

Proposed Section 58740 (Existing Section 10844)

Proposed Section 58740 would continue existing Section 10844.

Subdivision (b) of the existing section required DFW to prepare an identified report by January 1, 2011.

A Commission Note following the proposed section invited comment on whether that provision could be deleted as obsolete.

Both entities indicated that the report had been prepared, and agreed the provision requiring that preparation was now obsolete and could be deleted.

The staff recommends that the following revision of existing Section 10844 be included in the draft recommendation:

§ 10844 (amended). Education and outreach

10844. (a) The department shall undertake appropriate education and outreach regarding the current location of existing game refuges, agency contacts for statutory notices in Sections 10506 and 10507, and the potential closure of all state game refuges, except the California Sea Otter Game Refuge and the Farallon Islands Game Refuge.

(b) The department shall provide an opportunity for public comment concerning the potential elimination of game refuges.

(c) The department shall provide information about game refuge boundaries, including, but not limited to, maps available both on the department's Internet Web site and in hardcopy format.

(d) The department shall also provide Internet Web site contact information for the public to contact the department in accordance with state law.

(e) The department may conduct regional workshops as it determines to be necessary to provide public information about the proposed elimination of game refuges.

~~(b) The department, on or before January 1, 2011, shall prepare and submit to the Legislature a description of the public education and outreach effort undertaken pursuant to subdivision (a), and a summary of any information provided by the public that is relevant to the potential closure of all state game refuges except the California Sea Otter Game Refuge and the Farallon Islands Game Refuge.~~

Comment. Section 10844 is amended to delete subdivision (b) of the section as obsolete.

The section is also amended to add new subdivision designations.

Proposed Section 59255 (Existing Section 10843)

Proposed Section 59255 would continue existing Section 10843.

A Commission Note following the proposed section pointed out that a cross-reference in the existing section had been repealed in 1975, and invited comment on whether deletion of that cross-reference in the proposed section would be problematic.

Both entities agreed that the cross-referenced statute had been repealed and that the cross-reference could be deleted from the existing section.

The staff recommends that the following revision of existing Section 10843 be included in the draft recommendation:

§ 10843 (amended). Farallon Islands Game Refuge

10843. (a) The following constitutes the Farallon Islands Game Refuge: the Southeast Farallons, including Maintop Island, Middle Farallon, the North Farallons, Noonday Rock, and the waters lying around each island within one nautical mile from the coastline of each island.

(b) Section 10513 shall have no application in this refuge.

(c) Notwithstanding the provisions of Section 10500, persons on commercial vessels may possess unloaded firearms when traveling through the navigable waters of this refuge. Fishermen, however, may not take any seal or sea lion while in this refuge, notwithstanding the provisions of Section 4500 ~~or 4500.5~~.

Comment. Section 10843 is amended to delete a cross-reference to former Section 4500.5 as obsolete.

The section is also amended to add subdivision designations.

Proposed Section 59455 (Existing Section 10653); Proposed Section 59460 (Existing Section 10654)

Proposed Sections 59455 and 59460 would continue existing Sections 10653 and 10654, respectively.

A Commission Note following each proposed section pointed out that each existing section referred to a non-existent "San Francisco Game Refuge," which the two proposed sections would revise to refer to an existing "San Francisco Fish and Game Refuge." The Notes invited comment on whether that revision in either section would be problematic.

Both entities agreed that the revision in each section was appropriate and should be made.

The staff recommends that the following revisions of existing Sections 10653 and 10654 be included in the draft recommendation:

§ 10653 (amended). Transport of animals

10653. In the San Francisco Fish and Game Refuge, birds, mammals, fish, amphibians, and reptiles legally possessed may be carried openly by persons traveling through the refuge on public roads, between one-half hour before sunrise and one-half hour after sunset.

Comment. Section 10653 is amended to correct an erroneously named refuge.

§ 10654 (amended). Use of land for water supply purposes

10654. Nothing in this division prevents the full use of the land included in the San Francisco Fish and Game Refuge for water supply purposes, nor prohibits any authorized employee of the San Francisco water department from carrying out such reasonable measures as may be necessary for the protection of the water supply or the prevention of pollution of the streams or reservoirs.

Comment. Section 10654 is amended to correct an erroneously named refuge.

Proposed Section 60510 (Existing Section 2854)

Proposed Section 60510 would continue existing Section 2854.

A Commission Note following the proposed section noted that the section refers to a “workgroup” that is not identified in either the section or in any immediately preceding section. The Note invited comment on whether the reference should be clarified to refer to a specific workgroup named in a subsequent section.

Both entities agreed that the reference should be clarified as suggested in the Note.

The staff recommends that the following revision of existing Section 2854 be included in the draft recommendation:

§ 2854 (amended). Workgroup actions

2854. The ~~workgroup~~ State Interagency Marine Managed Areas Workgroup shall, after appropriate consultation with members of the public, determine future actions for implementing the recommendations of its final report.

Comment. Section 2854 is amended to identify a workgroup referenced in the section.

Proposed Section 62420 (Existing Section 2074.8)

Proposed Section 62420 would continue existing Section 2074.8.

A Commission Note following the proposed section invited comment on whether a provision of the existing section imposing a duty on DFW could be deleted, as the same duty appears to be imposed by another existing section.

A second Note invited comment on whether the last sentence of the existing section should be reconciled with a provision in another code section addressing the same subject matter.

In response to the first Note, both entities agreed that the provision of the existing section imposing the duty on DFW was redundant, and could be deleted.

Relating to the subject matter of the second Note, both entities addressed the operation of the two related provisions, and DFW indicated that the provision in Section 2074.8 “could be” revised for greater clarity. However, neither entity expressed that revision of that provision was necessary.

The staff recommends that the following revision of existing Section 2074.8 be included in the draft recommendation:

§ 2074.8 (amended). Scope of inquiry

2074.8. (a) This article does not impose any duty or obligation for, or otherwise require, the commission or the department to undertake independent studies or other assessments of any species when reviewing a petition and its attendant documents and comments. ~~However, the department shall seek independent scientific peer review of the department’s status report.~~

(b) The director may approve an extension of time for completion of the status report if necessary for the purposes of obtaining independent peer review pursuant to Section 2074.6.

Comment. Section 2074.8 is amended to delete a redundant provision. See Section 2074.6.

The section is also amended to add subdivision designations.

Proposed Section 63750 (Existing Section 2086(a))

Proposed Section 63750 would continue existing Section 2086(a).

A Commission Note following the proposed section invited comment on whether the last sentence of the existing provision, requiring DFW to propose specified regulations by no later than July 1, 1998, could be deleted as obsolete.

DFW agreed that the sentence was obsolete and could be deleted. FGC did not comment on the Note.

The staff recommends that the following revision of existing Section 2086 be included in the draft recommendation:

§ 2086 (amended). Voluntary programs

2086. (a) The department, in cooperation with the Department of Food and Agriculture, agricultural commissioners, extension agents, farmers, ranchers, and other agricultural experts, shall adopt regulations that authorize locally designed voluntary programs for routine and ongoing agricultural activities on farms or ranches that encourage habitat for candidate, threatened, and endangered species, and wildlife generally. Agricultural commissioners, extension agents, farmers, ranchers, or other agricultural experts, in cooperation with conservation groups, may propose those programs to the department. ~~The department shall propose regulations for those programs not later than July 1, 1998.~~

(b) Programs authorized under subdivision (a) shall do all of the following:

(1) Include management practices that will, to the maximum extent practicable, avoid and minimize take of candidate, endangered, and threatened species, while encouraging the enhancement of habitat.

(2) Be supported by the best available scientific information for both agricultural and conservation practices.

(3) Be consistent with the policies and goals of this chapter.

(4) Be designed to provide sufficient flexibility to maximize participation and to gain the maximum wildlife benefits without compromising the economics of agricultural operations.

(5) Include terms and conditions to allow farmers or ranchers to cease participation in a program without penalty. The terms and conditions shall include reasonable measures to minimize take during withdrawal from the program.

(c) Any taking of candidate, threatened, or endangered species incidental to routine and ongoing agricultural activities that occurs while the management practices specified by paragraph (1) of subdivision (b) are followed, is not prohibited by this chapter.

(d)(1) The department shall automatically renew the authorization for these voluntary programs every five years, unless the Legislature amends or repeals this section in which case the program shall be revised to conform to this section.

(2) Commencing in 2000, and every five years thereafter, the department shall post a report regarding the effect of the programs on its Internet Web site. The department shall consult with the Department of Food and Agriculture in evaluating the programs and preparing the report. The report shall address factors such as the temporary and permanent acreage benefiting from the programs, include an estimate of the amount of land upon which routine and ongoing agricultural activities are conducted, provide examples of farmer and rancher cooperation, and include recommendations to improve the voluntary participation by farmers and ranchers.

(e) If the authorization for these programs is not renewed or is modified under subdivision (d), persons participating in the program shall be allowed to cease participating in the program in accordance with the terms and conditions specified in paragraph (5) of subdivision (b), without penalty.

(f)(1) The department may approve an application submitted by an agricultural-based nonprofit organization or other entity registered as a California nonprofit organization to initiate and undertake public education and outreach activities that promote the achievement of the objectives of this chapter. An application submitted pursuant to this subdivision shall include the following:

(A) The name and contact information of the participating organization.

(B) A brief description of the planned outreach activities.

(C) An end date for the outreach activities.

(2) The department may require a participating organization to submit, for approval by the department, educational materials and outreach materials that are disseminated to the public in furtherance of this subdivision.

(3) A participating organization shall file an annual report with the department before the end of each calendar year during the time period specified in the application. The report shall include, but is not limited to, the following:

(A) Complete information on the activities conducted by the participating organization in the prior year, including a description of all means of communicating to the public and agricultural community, including personal visits, electronic communications, organized meetings, or other means.

(B) A compilation of responses from the public and members of the agricultural community that will assist the participating organization and the department to modify or improve public education and outreach activities on an ongoing basis.

(C) An assessment of the existing knowledge within the agricultural community of programs and prohibitions under this chapter and a review of outreach activities that could be used to adapt and improve future outreach efforts.

(D) Information on a farm or ranch that has expressed interest in participating in a voluntary program pursuant to this section or the safe harbor agreement program contained in Article 3.7 (commencing with Section 2089.2). This provision does not require the annual report to include the identification to the department of an individual, farm, or ranch.

Comment. Subdivision (a) of Section 2086 is amended to delete an obsolete deadline for the proposal of specified regulations.

Proposed Section 65465 (Existing Section 1798(e))

Proposed Section 65465 would continue existing Section 1798(e).

A Commission Note following the proposed section invited comment on what the staff perceived as a possibly erroneous cross-reference in the provision that would be continued.

DFW responded with an explanation as to why it believes the cross-reference is not erroneous, which sufficiently addresses the staff's concern. DFW further proposed a clarifying amendment of the existing provision that the staff believes makes sense.

FGC did not comment on the Note.

The staff recommends that the following revision of existing Section 1798 be included in the draft recommendation:

§ 1798 (amended). Application procedure

1798. (a)(1) Any person interested in establishing any bank with the department may elect to submit an optional draft prospectus for review by the department. Any draft prospectus shall be accompanied by a draft prospectus review fee of one thousand five hundred dollars (\$1,500) to fund the reasonable cost of the department's review services. The draft prospectus review, while optional, is intended to identify potential issues early so that the potential bank sponsor may attempt to address those issues prior to initiating the formal review process. The draft prospectus is a brief proposal submitted when scoping the concept of a bank, contemplating pursuing a bank idea, or for those new to the banking process.

(2) No later than 30 calendar days after the department receives a draft prospectus and review fee, the department shall make an initial evaluation of the proposed concept and notify the person who submitted the draft prospectus of potential issues identified by the department.

(b)(1) Any person seeking to establish a bank with the department shall submit a bank prospectus to the department together with a prospectus review fee of ten thousand dollars (\$10,000) to fund the reasonable cost of the department's review services. If a draft prospectus and the review fee have been submitted pursuant to subdivision (a), then the review fee for the bank prospectus shall be eight thousand five hundred dollars (\$8,500) so as not to exceed a total fee of ten thousand dollars (\$10,000).

(2) The bank prospectus shall contain at least all of the following information:

(A) The proposed bank name.

(B) Contact information, including, but not limited to, the bank sponsor, property owner, and any consultants.

(C) A general location map, address, and the size of the proposed bank in acres.

(D) A 7.5-minute United States Geological Survey map showing proposed boundaries of the bank.

(E) Color aerial photographs that reflect current conditions on the site of the proposed bank and surrounding properties.

(F) Description of how the bank will be established and operated, including, but not limited to, proposed ownership arrangements, long-term management strategy, and any phases.

(G) Qualifications of bank sponsor.

(H) Preliminary natural resources surveys that document biotic and abiotic baseline conditions, including past, current, and adjacent land uses, vegetation types, species information, topography, hydrology, and soil types.

(I) Map of proposed bank service areas.

(J) Map depicting other conserved lands in the vicinity of the proposed bank.

(K) Description of bank objectives that includes how the proposed bank would contribute to connectivity and ecosystem function.

(L) A current preliminary report covering the site of the proposed bank that identifies the owner of the fee simple title and shows all liens, easements, and other encumbrances and depicts all relevant property lines, easements, dedications, and other features.

(M) A declaration of whether or not the proposed bank site has been or is being used as mitigation, is designated or dedicated for park or open space use, or designated for purposes that may be inconsistent with habitat preservation.

(N) Details of any public funding received for acquisition or restoration of, or other purposes related to, the proposed bank site.

(c) No later than 30 calendar days after the department receives a bank prospectus and the prospectus review fee, the department shall determine whether or not the prospectus is complete and provide written notice of its determination to the person who submitted the prospectus. If a prospectus is not complete, it may be made complete and resubmitted.

(d) If the department determines that the prospectus is complete, then within 90 calendar days of that determination, the department shall determine whether or not the prospectus is acceptable and notify the person who submitted the prospectus of the determination. The department may request clarifying information during the prospectus review process.

(e)(1) If the department determines that a bank prospectus is acceptable then a bank agreement package may be submitted in accordance with Section 1798.5.

(2) If the department determines that a bank prospectus is not acceptable the department shall state the reasons for the determination. The prospectus may be resubmitted in accordance with subdivision (a) or (b) if further consideration is desired. Any resubmittal must be accompanied by payment of a new ~~prospectus~~ review fee.

(f) The department may adopt and amend guidelines and criteria for the purposes of this section pursuant to subdivision (b) of Section 1799.1.

Comment. Paragraph (2) of subdivision (e) of Section 1798 is amended for clarity.

Proposed Section 65500 (Existing Section 1798.5(a)(1)); Proposed Section 65550 (Existing Section 1798.6(a))

Proposed Sections 65500 and 65500 would continue existing Sections 1798.5(a)(1) and 1798.6(a), respectively.

A Commission Note following both proposed sections noted that a cross-reference to “subdivision (b) of Section 1799.1” in the corresponding existing provision appears to be incorrect, as the subject matter of the cross-referenced subdivision appears to have no relevance to the existing provision. However, the Notes pointed out there did appear to be a direct relationship between each existing provision and subdivision (c) of Section 1799.1. Each Note then invited comment on whether revising the cross-reference accordingly would cause any problem.

DFW agreed that in both existing provisions the reference to Section 1799.1(b) is erroneous, and in each case the reference should be to Section 1799.1(c). FGC did not comment on either Note.

The staff recommends that the following revisions of existing Sections 1798.5 and 1798.6 be included in the draft recommendation:

§ 1798.5 (amended). Bank agreement package

1798.5. (a)(1) If the department determines that a bank prospectus is acceptable pursuant to Section 1798, the person seeking to establish the bank may submit a bank agreement package to the department. Pursuant to subdivision ~~(b)~~ (c) of Section 1799.1, the department may adopt and amend guidelines and criteria for the bank agreement package, including, but not limited to,

recommended standard forms for bank enabling instruments or long-term management plan and conservation easements.

(2) The bank agreement package shall be consistent with the prospectus and contain at least all of the following information:

(A) The draft bank enabling instrument and all exhibits.

(B) Drafts of the interim management plan, long-term management plan, bank closure plan, and, if applicable, a development or construction plan for the bank.

(C) A draft conservation easement, or if potential state ownership is contemplated by the department, a draft grant deed.

(D) A map and written description of the proposed bank service area.

(E) A proposed credit ledger and credit release schedule for the bank.

(F) A property analysis record or other comparable economic analysis of the funding necessary to support bank maintenance activities, such as monitoring and reporting, in perpetuity.

(G) Estimates of financial assurances and proposed forms of security. Proposed forms of security may be either cash or a letter of credit.

(H) A phase I environmental site assessment of the site of the proposed bank dated not more than six months prior to the date the bank agreement package is submitted to the department. This assessment shall be performed in accordance with the American Society of Testing and Materials Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" or any successive ASTM standard active at the time of the assessment.

(b) The department shall collect a fee of twenty-five thousand dollars (\$25,000) per bank agreement package to fund the cost of the department's review services. The fee shall be collected at the time the bank agreement package is submitted to the department.

(c) Within 30 calendar days following the department's receipt of a bank agreement package and fee pursuant to subdivision (a), the department shall determine whether or not the package is complete and give written notice of the determination to the person who submitted the package.

(1) If the department determines that the bank agreement package is not complete, it may be made complete and resubmitted.

(2) If the department determines that the bank agreement package is complete, within 90 calendar days of that determination, the department shall determine whether or not it is acceptable and notify the person who submitted the package of the determination. If the department determines that the bank agreement package is not acceptable, the department shall state the reasons.

(d) The department may request clarifying information during the bank agreement review process.

(e) If the department needs supplemental information during its review of the bank agreement package in order to fully evaluate the proposed bank, the regional manager or departmental equivalent, or a higher level department employee, shall provide the person seeking to establish the bank a written request for the needed information. Upon the department's receipt of the requested information, a new 90-day period shall begin during which the department shall determine acceptability pursuant to paragraph (2) of subdivision (c). If the department does not receive the requested information within 60 calendar days of the department's request, the bank agreement package will be deemed unacceptable.

(f) If the person seeking to establish the bank proposes changes to the bank agreement package that have not been solicited by the department during its 90-day review period, including, but not limited to, parties, number or type of credits, bank size, number or type of species, credit release schedule, service area, design change, or other changes as identified by the department as necessitating additional review time, the department, acting through the regional manager or department equivalent, or a higher level department employee, shall assess a one-time fee of ten thousand dollars (\$10,000) to cover the reasonable cost of the department's services in reviewing the changes. A new 90-day review period shall begin upon the department's receipt of the proposed changes and the associated review fee, during which it will determine acceptability pursuant to paragraph (2) of subdivision (c).

(g) If the department determines that 90 days is insufficient time to complete its review of the bank agreement package for reasons including, but not limited to, the size, location, or complexity of the bank, that the package includes a development or construction plan, complexity of the bank agreement package, or substantial variations from recommended standard forms, the department may extend the 90-day period for reviewing the bank agreement package by an additional 60 calendar days.

(h) If the department determines that a bank agreement package is not acceptable, the package may be resubmitted in accordance with subdivision (a) if further consideration is desired. Any resubmittal shall be accompanied by payment of a new bank agreement package review fee.

Comment. Paragraph (1) of subdivision (a) of Section 1798.5 is amended to correct an erroneous cross-reference.

§ 1798.6 (amended). Bank amendment

1798.6. (a) Any person seeking to amend any bank shall submit to the department a complete bank amendment package containing each of the original bank agreement package documents, including any prior amendments, as well as any documents proposed to be amended or that would be affected by the proposed amendment. The department may adopt and amend guidelines and criteria for the bank amendment package pursuant to subdivision ~~(b)~~ (c) of Section 1799.1.

(b)(1) Within 30 calendar days following its receipt of a draft bank amendment package and any fee required by subdivision (c), the department shall determine whether or not the package is complete and give written notice of that determination to the person who submitted the package.

(2) If the department determines that the bank amendment package is complete, then within 90 calendar days of that determination, the department shall determine whether or not the package is acceptable and notify the person who submitted the package of that determination. If the bank amendment package is determined not to be acceptable, the determination shall state the reasons. The department may request clarifying information during the bank amendment review process. The department may extend the 90-day period for reviewing the bank amendment package by an additional 60 days if the department determines that 90 days is insufficient time to complete its review of a bank amendment package for reasons that may include, but are not limited to, the size, location, or complexity of the bank or bank amendment documents, that the package includes a development plan, or that there are substantial variations from recommended standard forms.

(c)(1) The department shall collect a fee of either seven thousand five hundred dollars (\$7,500) or twenty-five thousand dollars (\$25,000) per bank amendment package to fund the reasonable cost of the department's review services. The fee of seven thousand five hundred dollars (\$7,500) is intended to cover the reasonable cost of the department's services in reviewing simple amendments, such as a change in bank name, ownership change, address change, or proposed decrease in the number of credits proposed. The fee of twenty-five thousand dollars (\$25,000) is intended to cover the reasonable cost of the department's services in reviewing all other amendments, including, but not limited to, requests for increase change in service area, or increase in the number of credits. A regional manager or department equivalent, or a higher level department representative employee, shall determine which of the two fees is appropriate and shall provide notification of that determination to the person who submitted the request for bank amendment package pursuant to paragraph (3).

(2) An initial fee of seven thousand five hundred dollars (\$7,500) shall be submitted to the department with the bank amendment package.

(3) Within 30 calendar days following the department's receipt of a bank amendment package and the initial fee, pursuant to paragraph (2), the department shall determine whether or not the package is complete and give written notice of the determination to the person who submitted it and, if applicable, notice pursuant to paragraph (1) that the person shall remit an additional fee of seventeen thousand five hundred dollars (\$17,500). If noticed by the department, the additional fee of seventeen thousand five hundred dollars (\$17,500) shall be submitted to the department within 30 days of the notice. If the additional fee is not received by this date, the review timelines in this section shall be suspended until the fee is received by the department.

(4) If the department determines that the bank amendment package is not complete, the package may be made complete and resubmitted. If the department determines that the bank amendment package is complete, then within 90 calendar days of that determination and the receipt of the additional fee pursuant to paragraph (3), if applicable, the department shall determine whether or not the bank amendment package is acceptable and notify the person who submitted the package of the determination.

(d)(1) If the department determines that the bank amendment package is not acceptable the determination shall state the reasons.

(2) The department may request clarifying information during the bank amendment review process.

(e) If the department needs supplemental information during its review of the bank amendment package in order to fully evaluate the proposed amendment, the regional manager or department equivalent, or a higher level department employee, shall provide the person seeking to amend the bank, in writing, a written request for the needed information. Upon the department's receipt of the requested information, a new 90-day period shall begin during which the department will determine acceptability pursuant to paragraph (4) of subdivision (c). If the department does not receive the requested information within 60 calendar days of the department's request, the bank amendment package shall be deemed unacceptable.

(f) If the person seeking to amend the bank proposes changes to the bank amendment package that have not been solicited by the department during its the department's 90-day review period, including, but not limited to, parties, number or type of credits, bank size, number or type of species, credit release schedule, service area, design change, or other changes as identified by the department to require additional review time, the department, acting through the

regional manager or department equivalent, or a higher level department employee, shall assess a one-time fee of ten thousand dollars (\$10,000) to cover the reasonable cost of the department's services in reviewing the changes. A new 90-day review period shall begin upon receipt of the proposed changes and the fee, during which the department shall determine acceptability pursuant to paragraph (4) of subdivision (c).

(g) If the department determines that 90 days is insufficient time to complete its review of the bank amendment package for reasons, including, but not limited to, the size, location, or complexity of the bank or bank amendment package, that the package includes a development or construction plan, or substantial variations from recommended standard forms, the department may extend the 90-day period for reviewing the bank amendment package by an additional 60 calendar days.

(h) If the department determines that a bank amendment package is not acceptable, then the package may be resubmitted in accordance with subdivision (a) if further consideration is desired. Any resubmittal shall be accompanied by payment of all applicable bank amendment package review fees.

Comment. Subdivision (a) of Section 1798.6 is amended to correct an erroneous cross-reference.

Proposed Section 66810 (Existing Section 5654(d))

Proposed Section 66810 would continue existing Section 5654(d).

A Commission Note following the proposed section invited comment on whether a cross-reference in the continued provision that seemingly had no relevance to the existing provision could be deleted as erroneous.

FGC agreed that the cross-reference can be deleted from the existing provision. DFW indicated that the deletion would not substantively change the meaning of the provision or create any other problem.

The staff recommends that the following revision of existing Section 5654 be included in the draft recommendation:

§ 5654 (amended). Fishing closure

5654. (a)(1) Notwithstanding Section 5523 and except as provided in paragraph (2), the director, within 24 hours of notification of a spill or discharge, as those terms are defined in Section 8670.3 of the Government Code, where any fishing, including all commercial, recreational, and nonlicensed subsistence fishing, may take place, or where aquaculture operations are taking place, shall close to the take of all fish and shellfish all waters in the vicinity of the spill or discharge or where the spilled or discharged

material has spread, or is likely to spread. In determining where a spill or discharge is likely to spread, the director shall consult with the Administrator of the Office of Spill Prevention and Response. At the time of closure, the department shall make all reasonable efforts to notify the public of the closure, including notification to commercial and recreational fishing organizations, and posting of warnings on public piers and other locations where subsistence fishing is known to occur. The department shall coordinate, when possible, with local and regional agencies and organizations to expedite public notification.

(2) Closure pursuant to paragraph (1) is not required if, within 24 hours of notification of a spill or discharge, the Office of Environmental Health Hazard Assessment finds that a public health threat does not or is unlikely to exist.

(b) Within 48 hours of notification of a spill or discharge subject to subdivision (a), the director, in consultation with the Office of Environmental Health Hazard Assessment, shall make an assessment and determine all of the following:

(1) The danger posed to the public from fishing in the area where the spill or discharge occurred or spread, and the danger of consuming fish taken in the area where the spill or discharge occurred or spread.

(2) Whether the areas closed for the take of fish or shellfish should be expanded to prevent any potential take or consumption of any fish or shellfish that may have been contaminated by the spill or discharge.

(3) The likely period for maintaining a closure on the take of fish and shellfish in order to prevent any possible contaminated fish or shellfish from being taken or consumed or other threats to human health.

(c) Within 48 hours after receiving notification of a spill or discharge subject to subdivision (a), or as soon as is feasible, the director, in consultation with the Office of Environmental Health Hazard Assessment, shall assess and determine the potential danger from consuming fish that have been contained in a recirculating seawater tank onboard a vessel that may become contaminated by the vessel's movement through an area where the spill or discharge occurred or spread.

(d) If the director finds in ~~his or her~~ the director's assessment pursuant to subdivision (b) that there is no significant risk to the public or to the fisheries, the director may immediately reopen the closed area and waive the testing requirements of ~~subdivisions~~ subdivision (e) and (f).

(e) Except under the conditions specified in subdivision (d), after complying with subdivisions (a) and (b), the director, in consultation with the Office of Environmental Health Hazard Assessment, but in

no event more than seven days from the notification of the spill or discharge, shall order expedited tests of fish and shellfish that would have been open for take for commercial, recreational, or subsistence purposes in the closed area if not for the closure, to determine the levels of contamination, if any, and whether the fish or shellfish is safe for human consumption.

(f)(1) Within 24 hours of receiving a notification from the Office of Environmental Health Hazard Assessment that no threat to human health exists from the spill or discharge or that no contaminant from the spill or discharge is present that could contaminate fish or shellfish, the director shall reopen the areas closed pursuant to this section. The director may maintain a closure in any remaining portion of the closed area where the Office of Environmental Health Hazard Assessment finds contamination from the spill or discharge persists that may adversely affect human health.

(2) The director, in consultation with the commission, may also maintain a closure in any remaining portion of the closed area where commercial fishing or aquaculture occurs and where the department determines, pursuant to this paragraph, that contamination from the spill or discharge persists that may cause the waste of commercial fish or shellfish as regulated by Section 7701.

(g) To the extent feasible, the director shall consult with representatives of commercial and recreational fishing associations and subsistence fishing communities regarding the extent and duration of a closure, testing protocols, and findings. If a spill or discharge occurs within the lands governed by a Native American tribe or affects waters flowing through tribal lands, or tribal fisheries, the director shall consult with the affected tribal governments.

(h) The director shall seek full reimbursement from the responsible party or parties for the spill or discharge for all reasonable costs incurred by the department in carrying out this section, including, but not limited to, all testing.

Comment. Subdivision (d) of Section 5654 is amended to delete an erroneous cross-reference.

The subdivision is also amended to make it gender neutral.

Proposed Section 67505(a) (Existing Section 13011)

Proposed Section 67505(a) would continue existing Section 13011.

A Commission Note following the proposed section noted an erroneous cross-reference in Section 13011(a), and invited comment on a proposed correction. A second Note suggested that a cross-reference in Section 13011(b) was overbroad, and invited comment on a proposed narrowing of that cross-reference.

In response to the first Note, DFW agreed that the cross-reference in Section 13011(a) is erroneous, and should be corrected as proposed by the Commission. In response to the second Note, DFW disagreed that the cross-reference in Section 13011(b) should be narrowed as proposed by the Commission.

FGC did not comment on either Note.

The staff recommends that the following revision of existing Section 13011 be included in the draft recommendation:

§ 13011 (amended). Deposit of specified funds

13011. The state portion of any recovery or settlement of money damages received pursuant to any citation or charges brought under the following sections by the people by or through any state or local public entity shall be deposited in the following subaccounts:

(a) Administrative and judicially imposed fines, penalties, or punitive damages resulting from either civil or criminal action or administrative civil liability for violations of the oil and petroleum product control and discharge provisions of this code, including, but not limited to, Sections 2014, 12011, and 12016, Chapter 6.5 (commencing with Section 2580) of Division 3, and Chapter 2 (commencing with Section ~~5600~~ 5650) of Part 1 of Division 6, shall be deposited in the Oil Pollution Administration Subaccount or the Oil Pollution Response and Restoration Subaccount as determined by administrative or judicial settlement, or as provided by law.

(b) Administrative and judicially imposed fines, penalties, or punitive damages resulting from either criminal or administrative civil liability for violations of hazardous materials and other pollution laws including, but not limited to, Sections 2014 and 12016, ~~and~~ Chapter 6.5 (commencing with Section 2580) of Division 3, and Part 1 (commencing with Section 5500) of Division 6, shall be deposited in the Hazardous Materials Administration Subaccount or the Hazardous Materials Response and Restoration Subaccount as determined by administrative or judicial settlement or as provided by law.

Comment. Subdivision (a) of Section 13013 is amended to correct an erroneous cross-reference.

The section is also amended to make technical corrections.

Proposed Section 67505(b) (Existing Section 12017(a)(2)-(6))

Proposed Section 67505(b) would continue existing Section 12017(a)(2)-(6).

A Commission Note following the proposed section suggested that a cross-reference in Section 12017(a) was overbroad, and invited comment on a proposed narrowing of the cross-reference.

DFW agreed that the cross-reference can be amended as proposed by the Commission. FGC did not comment on the Note.

The staff recommends that the following revision of existing Section 12017 be included in the draft recommendation:

§ 12017 (amended). Deposit of specified funds

12017. (a) Notwithstanding subdivision (a) of Section 13001, any recovery or settlement of money received pursuant to the following sections shall be deposited in the Fish and Wildlife Pollution Account:

- (1) Section 2014.
 - (2) Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6.
 - (3) Section 12015 or 12016.
 - (4) Chapter 4 (commencing with Section 151) of Division 1.5 of the Harbors and Navigation Code.
 - (5) Section 13442 of the Water Code.
 - (6) Proceeds or recoveries from pollution and abatement actions.
- (b) Moneys in the account are continuously appropriated to the department, except as provided in Section 13230.

(c) Funds in the account shall be expended for the following purposes:

- (1) Abatement, cleanup, and removal of pollutants from the environment.
 - (2) Response coordination, planning, and program management.
 - (3) Resource injury determination.
 - (4) Resource damage assessment.
 - (5) Economic valuation of resources.
 - (6) Restoration or rehabilitation at sites damaged by pollution.
- (d) Notwithstanding subdivision (c), funds in the account in excess of one million dollars (\$1,000,000) as of July 1 of each year may also be expended for the preservation of California plants, wildlife, and fisheries.

(e) Funds in the account may be expended for cleanup and abatement if a reasonable effort has been made to have the responsible party pay cleanup and abatement costs and funds are not available for disbursement from the emergency reserve account of the Toxic Substances Control Account in the General Fund pursuant to Section 25354 of the Health and Safety Code.

(f) The department may use funds in the account to pay the costs of consultant contracts for resource injury determination or damage assessment during hazardous material or oil spill emergencies. These contracts are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

Comment. Subdivision (a) of Section 12017 is amended to correct an overbroad cross-reference.

Proposed Section 67525 (Existing Section 13013)

Proposed Section 67525 would continue existing Section 13013.

A Commission Note following the proposed section noted that a subdivision of the existing section referred to expenditures paid “from the accounts established pursuant to” two subdivisions of another section, but that those subdivisions do not provide for establishment of accounts. The Note inquired whether deleting reference to the expenditures being paid “from accounts” would be problematic.

DFW agreed that text in the existing section referencing payment from accounts can be deleted from the existing section, for the reason noted by the Commission. FGC did not comment on the Note.

The staff recommends that the following revision of existing Section 13013 be included in the draft recommendation:

§ 13013 (amended). Prudent reserve

13013. (a) Appropriations from either the Oil Pollution Administration Subaccount or the Hazardous Materials Administration Subaccount shall not exceed one third of the maximum fund level established under Section 13012 in order to maintain a prudent reserve for future appropriations.

(b) If the director or ~~his or her~~ the director's designee expends funds from the prudent reserve established pursuant to subdivision (a) for activities authorized under subdivision (b) of Section 13230, the director or the director's designee shall ensure that there are adequate funds remaining in those subaccounts to carry out their purposes. Expenditures from the prudent reserve shall be repaid in part, or in full, from any funds received pursuant to Section 13011 until those reserves are fully reimbursed.

(c) The director or ~~his or her~~ the director's designee, shall recover from the spiller, responsible party, or, in the absence of those responsible parties, from a particular pollution abatement or remediation account, all expenditures paid ~~from the accounts established~~ pursuant to subdivisions (b) and (d) of Section 13230, and all costs incurred by the department arising from the administration and enforcement of applicable pollution laws. The director or ~~his or her~~ the director's designee may request, and a district attorney, city attorney, or other prosecuting agency, as part of a prosecution or negotiation, may allege a claim for, these costs and expenditures and shall deposit any recoveries into the fund from which they were expended.

(d) The director or ~~his or her~~ the director's designee shall ensure that there are adequate funds in the accounts and subaccounts specified in this section to carry out their purposes.

Comment. Subdivision (c) of Section 13013 is amended to delete an erroneous reference to accounts established pursuant to subdivisions (b) and (d) of Section 13230.

The section is also amended to make it gender neutral.

Proposed Section 68105 (Existing Section 5901)

Proposed Section 68105 would continue existing Section 5901.

A Commission Note following the proposed section pointed out that the existing section includes references to two non-existent Fish and Game Districts, and invited comment on deletion of those references from the existing section.

Both entities agreed that the two references can be deleted.

The staff recommends that the following revision of existing Section 5901 be included in the draft recommendation:

§ 5901 (amended). Obstruction in specified districts

5901. Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, $1^{3/8}$, $1^{1/2}$, ~~$1^{7/8}$~~ 2, $2^{1/4}$, $2^{1/2}$, ~~$2^{3/4}$~~ 3, $3^{1/2}$, 4, $4^{1/8}$, $4^{1/2}$, $4^{3/4}$, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

Comment. Section 5901 is amended to delete references to two non-existent Fish and Game Districts.

Proposed Section 68600 (Existing Section 5946)

Proposed Section 68600 would continue existing Section 5946, which was last amended in 1957.

A Commission Note following the proposed section noted that the section refers to a permit or license issued by the "State Water Rights Board," a non-existent state entity. The Note invited comment on an appropriate revision of that reference.

DFW indicated the reference should be updated to refer to the "State Water Resources Control Board," which it indicates is the successor to the State Water Rights Board, and the state agency currently vested with authority to issue the permits or licenses referenced in the existing section.

FGC did not comment on the Note.

The staff recommends that the following revision of existing Section 5946 be included in the draft recommendation:

§ 5946 (amended). Dams constructed in District 4^{1/2}

5946. (a) The provisions of Section 5938 shall not be applicable to dams constructed in District 4^{1/2} after September 9, 1953.

(b) No permit or license to appropriate water in District 4^{1/2} shall be issued by the ~~State Water Rights Board~~ State Water Resources Control Board after September 9, 1953, unless conditioned upon full compliance with Section 5937.

(c) Plans and specifications for any such dam shall not be approved by the Department of Water Resources unless adequate provision is made for full compliance with Section 5937.

Comment. Section 5946 is amended to update a reference to the former State Water Rights Board.

The section is also amended to add subdivision designations and make a technical correction.

Proposed Section 69880 (Existing Section 1605(h))

Proposed Section 69880 would continue existing Section 1605(h).

A Commission Note following the proposed section invited comment on a proposed revision of a reference in the existing provision to “this paragraph,” to instead refer to “this subdivision.”

DFW agreed the revision should be made. FGC did not comment on the Note.

The staff recommends that the following revision of existing Section 1605 be included in the draft recommendation:

§ 1605 (amended). Duration and extension of agreement

1605. (a)(1) Except as otherwise provided in this section, the term of an agreement shall not exceed five years.

(2) Notwithstanding paragraph (1), after the agreement expires, the entity shall remain responsible for implementing any mitigation or other measures specified in the agreement to protect fish and wildlife resources.

(b) Any entity may request one extension of a previously-approved agreement, if the entity requests the extension prior to the expiration of its original term. The department shall grant the extension unless it determines that the agreement requires modification because the measures contained in the agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. In the event the department makes that determination, the department shall propose measures intended to protect those resources.

(c) If the entity disagrees with the department's determination that the agreement requires modification to protect fish and wildlife resources or with the measures proposed by the department, the disagreement shall be resolved pursuant to the procedures described in subdivision (b) of Section 1603.

(d) The department may not extend an agreement for more than five years.

(e)(1) An original agreement shall remain in effect until the department grants the extension request, or new measures are imposed to protect fish and wildlife resources by agreement or through the arbitration process.

(2) Notwithstanding paragraph (1), an original agreement may not remain in effect for more than one year after its expiration date.

(f) If the entity fails to submit a request to extend an agreement prior to its expiration, the entity shall submit a new notification before commencing or continuing the activity covered by the agreement.

(g) Notwithstanding paragraph (1) of subdivision (a), the department may issue an agreement, that otherwise meets the requirements of this chapter, for a term longer than five years if the following conditions are satisfied:

(1) The information the entity provides to the department in its notification meets the requirements of paragraph (1) of subdivision (a) of Section 1602.

(2) The entity agrees to provide a status report to the department every four years. The status report shall be delivered to the department no later than 90 days prior to the end of each four-year period, and shall include all of the following information:

(A) A copy of the original agreement.

(B) The status of the activity covered by the agreement.

(C) An evaluation of the success or failure of the measures in the agreement to protect the fish and wildlife resources that the activity may substantially adversely affect.

(D) A discussion of any factors that could increase the predicted adverse impacts on fish and wildlife resources, and a description of the resources that may be adversely affected.

(3) The department shall review the four-year status report, and conduct an onsite inspection to confirm that the entity is in compliance with the agreement and that the measures in the agreement continue to protect the fish and wildlife resources. If the department determines that the measures in the agreement no longer protect the fish and wildlife resources that are being substantially adversely affected by the activity, the department, in consultation with the entity, and within 45 days of receipt of the report, shall impose one or more new measures to protect the fish and wildlife resources affected by the activity. If requested to do so

by the entity, the department shall make available the information upon which it determined the agreement no longer protects the affected fish and wildlife resources. If the entity disagrees with one or more of the new measures, within seven days of receiving the new measures, it shall notify the department, in writing, of the disagreement. The entity and the department shall consult regarding the disagreement. The consultation shall be completed within seven days after the department receives the entity's notice of disagreement. If the department and entity fail to reach agreement, the entity may request, in writing, the appointment of a panel of arbitrators to resolve the disagreement. The panel of arbitrators shall be appointed within 14 days of the completed consultation. The panel of arbitrators shall issue a decision within 14 days of the date it is established. All other provisions of subdivision (b) of Section 1603 regarding the panel shall apply to any arbitration panel established in accordance with this subdivision. If the entity fails to provide timely status reports as required by this subdivision, the department may suspend or revoke the agreement.

(4) The agreement shall authorize department employees to conduct onsite inspections relevant to the agreement, upon reasonable notice. Nothing in this section limits the authority of department employees to inspect private or public sites.

(5) Except as provided in paragraph (3), subparagraph (D) of paragraph (4) of subdivision (a) of Section 1602 and the time periods to process agreements specified in this chapter do not apply to agreements issued pursuant to this section.

(h) Each region of the department shall log the notifications of activities for which a long-term agreement is being considered pursuant to subdivision (g). The log shall list the date the notification was received by the department, a brief description of the proposed activity, and the location of the activity. Each item shall remain on the log for one year. Upon written request by any person, a regional office shall send the log to that person monthly for one year. A request made pursuant to this ~~paragraph~~ subdivision may be renewed annually.

Comment. Subdivision (h) of Section 1605 is amended to make a technical correction.

Proposed Section 71280 (Existing Section 5653.1)

Proposed Section 71280 would continue existing Section 5653.1.

Commission Notes following the proposed section invited comment on whether either subdivision (b) or (c) of the existing section were obsolete and could be deleted.

DFW indicated that subdivision (b) requires completion of a certification that DFW has not yet completed, and so that subdivision is not obsolete. DFW agreed that subdivision (c) is obsolete, and can be deleted.

FGC did not comment on either Note.

The staff recommends that the following revision of existing Section 5653.1 be included in the draft recommendation:

§ 5653.1 (amended). Moratorium and regulation review

5653.1. (a) The issuance of permits to operate vacuum or suction dredge equipment is a project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and permits may only be issued, and vacuum or suction dredge mining may only occur as authorized by any existing permit, if the department has caused to be prepared, and certified the completion of, an environmental impact report for the project pursuant to the court order and consent judgment entered in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.

(b) Notwithstanding Section 5653, the use of any vacuum or suction dredge equipment in any river, stream, or lake of this state is prohibited until the director certifies to the Secretary of State that all of the following have occurred:

(1) The department has completed the environmental review of its existing suction dredge mining regulations, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.

(2) The department has transmitted for filing with the Secretary of State pursuant to Section 11343 of the Government Code, a certified copy of new regulations adopted, as necessary, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) The new regulations described in paragraph (2) are operative.

(4) The new regulations described in paragraph (2) fully mitigate all identified significant environmental impacts.

(5) A fee structure is in place that will fully cover all costs to the department related to the administration of the program.

~~(c) (1) To facilitate its compliance with subdivision (b), the department shall consult with other agencies as it determines to be necessary, including, but not limited to, the State Water Resources Control Board, the State Department of Public Health, and the Native American Heritage Commission, and, on or before April 1, 2013, shall prepare and submit to the Legislature a report with~~

~~recommendations on statutory changes or authorizations that, in the determination of the department, are necessary to develop the suction dredge regulations required by paragraph (2) of subdivision (b), including, but not limited to, recommendations relating to the mitigation of all identified significant environmental impacts and a fee structure that will fully cover all program costs.~~

~~(2) The requirement for submitting a report imposed under this subdivision is inoperative on January 1, 2017, pursuant to Section 10231.5 of the Government Code.~~

~~(3) The report submitted to the Legislature pursuant to this subdivision shall be submitted in accordance with Section 9795 of the Government Code.~~

~~(d) (c)~~ The Legislature finds and declares that this section, as added during the 2009–10 Regular Session, applies solely to vacuum and suction dredging activities conducted for instream mining purposes. This section does not expand or provide new authority for the department to close or regulate suction dredging conducted for regular maintenance of energy or water supply management infrastructure, flood control, or navigational purposes governed by other state or federal law.

~~(e) (d)~~ This section does not prohibit or restrict nonmotorized recreational mining activities, including panning for gold.

Comment. Section 5653.1 is amended to delete subdivision (c) of the section as obsolete.

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 56820 (Existing Section 2945); Proposed Section 56825 (Existing Section 2942(a)(2))

Proposed Sections 56820 and 56825 would continue existing Sections 2945 and 2942(a)(2), respectively. Both existing provisions presently apply only to the provisions in the article in which each provision appears.

A Commission Note following each proposed section indicated that the tentative recommendation would generalize the existing provisions to also apply to provisions in the article preceding the article in which the existing provisions appear. The Notes then invited comment on whether each generalization would be problematic.

DFW responded to both Notes, asserting and explaining why as to each existing section the generalization would cause a significant and undesirable substantive change. FGC did not comment on either Note.

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

Proposed Section 60700 (Existing Section 1500)

Proposed Section 60700 would restate existing Section 1500, in an attempt to improve its clarity. In a Commission Note following the proposed section, the Commission invited comment on the proposed clarification.

In response, DFW suggested that some aspects of the restatement in fact make the existing section less clear, and other aspects incorrectly restate parts of the existing section.

In light of the responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 62370 (Existing Section 2074.2(d))

Proposed Section 62370 would restate existing Section 2074.2(d), in an attempt to improve its clarity. In a Commission Note following the proposed section, the Commission invited comment on the proposed clarification.

In response, both entities expressed their view that the restatement does not improve clarity, and could create a significant substantive change.

In light of the responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 62470 (Existing Section 2075.5(d))

Proposed Section 62470 would restate existing Section 2075.5(d), in an attempt to improve its clarity. In a Note following the proposed section, the Commission invited comment on the proposed clarification.

In response, both entities expressed their view that the restatement does not improve clarity and could create a significant substantive change.

In light of the responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 64600 (Existing Section 2821)

Proposed Section 64600 would continue existing Section 2821.

The existing section requires DFW to make findings to support coverage of identified species under a natural community conservation plan, pursuant to another lengthy code section.

A Commission Note indicated that the proposed section would narrow the cross-reference to the other code section to refer only to provisions within the code section that seemed most relevant to the purpose of the cross-reference, and invited comment on that revision.

DFW responded that it believed the revision would be problematic, in that it would change what DFW understands to be its current obligation under the section. FGC did not comment on the Note.

In light of the responsive comment, the staff recommends no revision of the existing section at this time.

Proposed Section 71060 (Existing Section 5653.7); Proposed Section 71075 (Existing Section 5653.3)); Proposed Section 71260 (Existing Section 5653(f))

Proposed Sections 71060, 71075, and 71260 would continue existing Sections 5653.7, 5653.3, and 5653(f), respectively.

Commission Notes following each proposed section invited comment on a proposed narrowing of a cross-reference within each existing provision to Section 5653, so as to cross-refer only to the parts of Section 5653 that appeared relevant to the purpose of the reference.

In response, DFW expressed its belief that the cross-reference in each existing provision is appropriate as stated, and does not require narrowing.

FGC did not comment on any of the Notes.

In light of the responsive comment, the staff recommends no revision of any of these existing sections at this time.

CHANGES THAT SHOULD PRESUMPTIVELY BE MADE

The proposed revisions listed below were presented in a Commission Note in the tentative recommendation, and were not identified as problematic by either

commenting entity. However, as the revisions were also not clearly supported by either entity, they are not yet recommended for inclusion in the draft recommendation. The staff will seek input from the entities relating to that support, and unless that input warrants a different approach, the staff will recommend in a future memorandum that the revisions that follow be provisionally approved for inclusion in the draft recommendation.

This section of the supplement will also 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.

Proposed Section 53830 (Existing Section 1909); Proposed Section 54055 (Existing Section 6652); Proposed Section 60705 (Existing Section 1500.5); Proposed Section 60955 (Existing Section 10741)⁹; Proposed Section 62400 (Existing Section 2074.6); Proposed Section 63610 (Existing Section 2082.1(e)); Proposed Section 68100 (Existing Section 5948); Proposed Section 68850 (Existing Section 5981); Proposed Section 69065 (Existing Section 6023); Proposed Section 69505 (Existing Section 6100(b)); Proposed Section 69775 (Existing Section 1608); Proposed Section 71765 (Existing Section 5800(d))

The proposed sections listed above would all restate some or all of the corresponding existing sections without any intended substantive change, to make the provisions easier to understand and use. In each instance, one or both entities agree the proposed restatement would not substantively change existing law,¹⁰ but neither entity offers clear support for the revision.

The staff therefore recommends that the restatements be treated as presumptively correct, and absent objection from a commenter, presented for approval as consent items in a future memorandum.

Proposed Section 58800 (Existing Section 10820); Proposed Section 58825 (Existing Section 10821); Proposed Section 58850 (Existing Section 10822); Proposed Section 58875 (Existing Section 10823); Proposed Section 58900 (Existing Section 10824); Proposed Section 58925 (Existing Section 10825); Proposed Section 58950 (Existing Section 10826); Proposed Section 58975 (Existing Section 10827); Proposed Section 59000 (Existing Section 10828); Proposed Section 59025 (Existing Section 10829); Proposed Section 59050 (Existing Section 10830); Proposed Section 59075 (Existing Section 10831); Proposed Section 59100 (Existing Section 10832); Proposed Section 59125

9. Both entities agreed that a minor aspect of the proposed restatement of existing Section 10741 would cause a substantive change in the meaning of the section. This aspect of the revision would not be proposed in this phase of this study.

10. See n. 9, *supra*.

(Existing Section 10835); Proposed Section 59150 (Existing Section 10836); Proposed Section 59175 (Existing Section 10837); Proposed Section 59200 (Existing Section 10838); Proposed Section 59275 (Existing Section 10842); Proposed Section 59300 (Existing Section 10833); Proposed Section 59425 (Existing Section 10770)

The proposed sections listed above would continue the existing sections listed above, each of which refer to and label fish and game refuges as Fish and Game “districts.”

A Commission Note following proposed Section 58800 pointed out that labeling these refuges as “districts” could be confusing, because “district” is also the term used to label the districts that subdivide the state for purposes of administration and special regulation.¹¹ As a result, the proposed sections would instead refer to the refuges as “refuges,” and the Note invited comment on whether that change would be problematic.¹²

In response, DFW agreed that the use of the term “district” in these sections is potentially confusing, but stopped short of supporting the proposed revisions. FGC did not comment on the Note.

The staff recommends that revisions of existing sections listed above that would relabel “districts” as “refuges” be treated as presumptively correct, and absent objection from a commenter, presented for approval as consent items in a future memorandum.

FURTHER INPUT REQUIRED

The staff believes that further input is required before resolving the treatment of the proposed revisions described below. The staff’s intention is to work with the commenters informally to obtain that input, and then again present the proposed revisions for a decision by the Commission in a subsequent memorandum.

This section of the supplement will also 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.

11. See existing Sections 11000-11039.

12. The Note also described and invited comment on additional conforming changes to these sections that are no longer recommended based on entity comment.

Proposed Section 53855(d) (Existing Section 1913(c))

Proposed Section 53855 would continue existing Section 1913, a section relating to native plant protection. Section 1913(c) refers to a notice to a landowner that a rare or endangered native plant is growing on their land, given pursuant to Section 1903.5, which is a non-existent section.

A Commission Note advised that the proposed section would substitute a cross-reference to the second sentence of existing Section 1904, which appeared to require a notice similar to that described in Section 1913, and invited comment on whether that would be the correct resolution of the erroneous cross-reference.

DFW agreed the existing cross-reference is incorrect, but believes the subdivision should be continued with no cross-reference, as it cannot confirm what cross-reference the Legislature intended. FGC did not comment on the Note.

The staff has since located an advisory opinion from the California Attorney General's Office indicating that the notification of landowners referred to in Section 1913 is specified in section 1904, not section 1903.5.¹³

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

Proposed Sections 59790 and 57975 (Existing Section 10667)

Proposed Sections 59790 and 57975 each continue parts of existing Section 10667.

The application of two provisions of the existing section are expressly limited to the existing section. A Commission Note following each proposed section invited comment on whether broadening the application of those two provisions to all code sections in the article containing the existing section would be problematic.

Both entities indicated in response that this broadening would not substantively change the meaning of either cross-reference. However, FGC also expressed its belief that the revisions would provide no benefit to existing law. Moreover, both entities expressed their belief that the entire existing section has been rendered obsolete by subsequent FGC regulatory action.

13. 81 Ops. Cal. Atty. Gen. 222 (June 23, 1998), n. 9.

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.

Proposed Section 62480 (Existing Section 2076)

Proposed Section 62480 would continue existing Section 2076, which in its entirety reads: “Any finding pursuant to this section is subject to judicial review under Section 1094.5 of the Code of Civil Procedure.”

A Commission Note following the proposed section noted that the existing section does not provide for any finding, and suggested that the intended reference was meant to be Section 2075.5, the preceding section that in subdivision (e) does call for findings by FGC. The Note invited comment on a revision of the reference to “this section” in Section 2076 to instead refer to a proposed section that would continue Section 2075.5(e).

Both entities agreed that the reference in Section 2076 to “this section” should be amended, but disagreed on what the new reference should be. FGC asserted that the reference should be amended to refer to Section 2075.5, while DFW believes the new reference should be to subdivision (e) of section 2075.5.

Another possibility has occurred to the staff. Section 2076 was added to the existing code by a bill that added many other sections to the article in which Section 2076 appears,¹⁴ and several of those sections¹⁵ refer to findings made by FGC. The staff therefore now suspects the erroneous reference in Section 2076 to any finding pursuant to “this section” may have been intended to refer to any finding pursuant to “this article.”

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.

Proposed Section 63310 (Existing Section 2081.7(e)(1)-(3))

Proposed Section 63310 would continue a part of existing Section 2087.1.

A Commission Note following the proposed section invited comment on whether a single provision set forth in Section 2081.7(e)(3) could be deleted as obsolete.

14. 1984 Cal. Stat. ch. 1162.

15. Sections 2070, 2074.2, and 2076.5.

DFW responded, indicating without further explanation that Section 2081.7(e)(1)-(3), a significantly greater part of Section 2081.7, could be deleted as obsolete.

FGC did not comment on the Note.

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

Proposed Section 65060 (Existing Section 1855(c))

Proposed Section 65060 would continue existing Section 1855(c).

The proposed section sought to clarify two broad statutory references in the existing section, and Commission Notes following the proposed section invited comment on the two clarifications.

DFW's responses to the Notes do not appear to directly address the questions asked by the Commission in the two Notes. FGC did not comment on either Note.

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

Proposed Section 66800 (Existing Section 5654(a))

Proposed Section 66800 would in part restate the first sentence of existing Section 5654(a)(1) to improve its clarity. A Commission Note following the proposed section invited comment on whether the restatement would cause any problems.

Both entities responded similarly, indicating only that the restatement would make an identified and significant substantive change. However, the identified change is solely attributable to the staff's inadvertent omission from the restatement of two words that can easily be inserted in the restatement, without impacting the clarity the restatement would otherwise provide.

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

Proposed Section 68800 (Existing Section 5980)

Proposed Section 68800 would restate existing Section 5980.

A Commission Note following the proposed section sought clarification relating to a cross-reference in the existing section. A second Note invited comment on the proposed restatement of the existing section.

In response to the first Note, DFW offered its understanding of the cross-reference, and suggested a fairly substantial amendment of the section that it believed would codify that understanding. In response to the second Note, DFW agreed with the underlying rationale for the Commission's proposed restatement of the section, but did not expressly comment on the language of the restatement.

FGC did not respond to either Note.

The staff recommends that it further discuss revision of this 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.

Proposed Section 69000 (Existing Section 6020)

Proposed Section 69000 would restate existing Section 6020.

A Commission Note following the proposed section sought clarification relating to a cross-reference in the existing section. DFW offered its understanding of the reference, but did not comment on whether a revision of the section should or should not be proposed. FGC did not respond to the Note.

The staff recommends that it further discuss revision of this 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.

Proposed Section 70165 (Existing Section 1602(d))

Proposed Section 70165 would continue existing Section 1602(d).

A Commission Note following the proposed section invited comment on narrowing a cross-reference in Section 1602(d) to the relevant part of the cross-referenced section. A second Note following the proposed section invited comment on a proposed revision of a reference in Section 1602(d)(3) to "this section."

In response to the first Note, DFW appeared to agree that the proposed narrowing of the cross-reference was appropriate, although it is difficult to be certain because both the Commission Note and DFW's response appear to incorrectly cite the cross-referenced section.

In response to the second Note, DFW agreed that the identified reference should be revised, but disagreed as to what the new reference should be.

FGC did not comment on either Note.

The staff recommends that it further discuss revision of this 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.

Proposed Section 71500(b) (Existing Sections 3005(b)(3), 3800(b)(3))

Proposed Section 71500(b) would combine and continue existing Sections 3005(b)(3) and 3800(b)(3), both of which require mine operators to prepare mitigation plans that will result in an overall reduction in take of avian or mammal species.¹⁶

The text of the two existing provisions are identical, with one exception. Section 3800(b)(3) provides that the required mitigation plan “alone or in conjunction with regulations adopted by the commission” must produce reduction in take, while Section 3005(b)(3) makes no mention of regulations adopted by the commission. A Commission Note following the proposed section indicated that in the merged proposed section the language relating to commission regulations would be retained, and invited comment on that harmonization.

DFW believes the better harmonization of the two provisions would be to delete the reference to commission regulations from Section 3800(b)(3), in the absence of any such existing regulations. Alternatively, DFW suggests that the two provisions should remain unchanged.

FGC did not comment on the Note.

As was indicated in the Commission Note, the staff sees no policy reason that would support consideration of commission regulations in one of these otherwise identical provisions, and not in the other. Further, as the two provisions were added to the existing code by the same bill,¹⁷ the staff suspects the discrepancy is based on an inadvertent drafting error, and believes it would be of value to resolve the incongruity. The staff has located some possibly helpful legislative history relevant to the issue, but it is not determinative.

The staff recommends that it further discuss revision of this 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.

16. Section 3005 generally prohibits the take of birds or mammals by specified means, but not when the take relates to ongoing mining operations in accordance with a mitigation plan approved by DFW. Section 3800 generally prohibits the take of any nongame bird by any means, but not when the take relates to the same specified mining operations.

17. 1994 Cal. Stat. ch. 768.

Proposed Section 71760 (Existing Section 5800(c))

Proposed Section 71760 would continue existing Section 5800(c), a section that was enacted in 1957 and has not since been amended.

A Commission Note following the proposed section invited comment on how two noted ambiguities in the existing provision might be revised to make their meaning clearer.

DFW agreed that the text of the existing provision is ambiguous with respect to the two noted issues, and suggested a revision that possibly addresses one of the two ambiguities. FGC did not comment on the Note.

The staff recommends that it further discuss revision of this 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 55830 (Existing Section 2786)

Proposed Section 55830 would continue existing Section 2786. The existing section appears in a chapter that was added by a 1990 initiative.¹⁸ The California Constitution prohibits the Legislature from amending the substance of an initiative statute, unless expressly permitted by the text of the initiative.¹⁹ As a result, in the tentative recommendation the Commission adopted a very deferential approach to the recodification of provisions added by initiative.

18. Proposition 117 (1990).

19. See Cal. Const. art. 2, § 10; *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 227 P.3d 858, 107 Cal.Rptr.3d 265.

Nevertheless, a Commission Note following the proposed section pointed out that the existing section included an irregularity in how a statutory article was cited, and invited comment on whether correcting the citation would be problematic.

In response, DFW indicated that making the correction could result in a substantive change in the intended meaning of the section.

FGC did not respond to the Note.

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

Proposed Section 55885 (Existing Section 2797)

Proposed Section 55885 would continue existing Section 2797, which was added to the existing code by the same initiative that added existing Section 2786.²⁰

A Commission Note following the proposed section explained that due to the existing section's status as an initiative statute, two seemingly obsolete provisions in the section would be continued in the proposed section, and invited comment on that continuation.

DFW agreed that the provisions should be continued. FGC did not comment on the Note.

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

Proposed Section 56815 (Existing Section 2941)

Proposed Section 56815 would continue existing Section 2941, a section containing a series of definitions governing the construction of the article in which the section applies.

A Commission Note following the proposed section indicated that the tentative recommendation would generalize those definitions to also apply to provisions appearing in the article preceding the article in which Section 2941 appears, and invited comment on whether that generalization would be problematic.

DFW agreed that the definitions in Section 2941 apply to the provisions in the article preceding the article in which Section 2941 appears. FGC did not comment on the Note.

However, this generalization of these definitions was proposed in the tentative recommendation only to facilitate reorganization of the provisions in the two articles. The definitions in Section 2941 have no current relevance to the sections

20. Proposition 117 (1990).

in the article preceding the article in which Section 2941 appears, and absent reorganization there is no need to make this statutory revision.

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

Proposed Section 58505 (Existing Section 10503)

Proposed Section 58505 would continue existing Section 10503(a)-(c).

Although the existing section is located in a chapter of the existing code relating to refuges and other protected areas, some of the provisions of the existing section are not expressly limited to refuge-related activities.

A Commission Note following the proposed section invited comment on whether the application of those provisions should be expressly limited to those activities. Both entities responded by indicating their belief that the provisions express general powers of the Fish and Game Commission, and their application should not be changed.

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

Proposed Section 60520 (Existing Section 2859); Proposed Section 60525 (Existing Section 2857)

Proposed Sections 60520 and 60525 would continue existing Sections 2859 and 2857, respectively. Both existing sections describe in details responsibilities DFW is required to fulfill by specified target dates, the latest being December 1, 2005. Commission Notes following each proposed section invite comment on whether any part of either existing section should be discontinued as obsolete.

Both entities indicated in response that while both existing sections are technically obsolete, the entities oppose repeal of the sections. Both entities believe that retention of the detailed text of the sections in the existing code will provide assistance in ongoing and future planning.

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

Proposed Section 63305 (Existing Section 2081.7(b)-(d))

Proposed Section 63305 would continue existing Section 2087.1(b)-(d).

A Commission Note following the proposed section invited comment on correction of what the staff perceived to be an erroneous cross-reference in the

existing section. However, the staff appears to have misread the cross-reference, and DFW correctly noted that the cross-reference does not need revision.

FGC did not comment on the Note.

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

Proposed Section 65585 (Existing Section 1798.6(b))

Proposed Section 65585 would continue the fifth sentence of existing Section 1798.6(b).

A Commission Note following the proposed section suggested that the existing subdivision that the proposed section would continue in part appeared to be substantially duplicative of another subdivision in the existing section, and invited comment on whether one of the subdivisions could be deleted as redundant.

DFW responded with an explanation as to why the two subdivisions are not duplicative, which sufficiently addresses the staff's concern.

FGC did not comment on the Note.

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

Proposed Section 68000 (Existing Section 5900)

Proposed Section 68000 would continue existing Section 5900, which provides definitions of terms used in the chapter in which the existing section appears. Subdivision (c) of the existing section, defining the term "owner," addresses application of the definition in four other referenced sections.

A Commission Note following the proposed section noted that the term "owner" does not appear in one of the referenced sections. The Note proposed to delete that referenced section from the subdivision, and invited comment on that deletion.

DFW believes the referenced section should not be deleted. It indicates that although the term "owner" does not appear in the text of the section, the defined term has relevance to a program that is the subject of the section.

FGC did not comment on the Note.

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

- **Proposed Section 39950 (Existing Section 8494(a))**
- **Proposed Section 56535 (Existing Section 3406(a))**
- **Proposed Section 62020 (Existing Section 2053)**
- **Proposed Section 62128 (Existing Section 2064.5)**
- **Proposed Section 62475 (Existing Section 2075.5)**
- **Proposed Section 62500 (Existing Section 2077(a))**
- **Proposed Section 62505 (Existing Section 2077(b))**
- **Proposed Section 62600 (Existing Section 2080)**
- **Proposed Section 62665 (Existing Section 2084)**
- **Proposed Section 62700 (Existing Section 2081(b)-(e))**
- **Proposed Section 62705 (Existing Section 2081.1)**
- **Proposed Section 63475 (Existing Section 2081.11)**
- **Proposed Section 63510 (Existing Section 2081.12)**
- **Proposed Section 63600 (Existing Section 2081.2(a))**
- **Proposed Section 63610 (Existing Section 2082.1(e))**
- **Proposed Section 63625 (Existing Section 2081.2(d))**
- **Proposed Section 63630 (Existing Section 2081.2(f)(3))**
- **Proposed Section 63910 (Existing Section 2089.4)**
- **Proposed Section 63915 (Existing Section 2089.2(c)-(d))**
- **Proposed Section 63930 (Existing Section 2089.22)**
- **Proposed Section 63950 (Existing Section 2089.6)**
- **Proposed Section 64075 (Existing Section 2089.5)**
- **Proposed Section 64100 (Existing Section 2079.1(a)-(b))**
- **Proposed Section 64105 (Existing Section 2079.1(c)-(e))**
- **Proposed Section 64110 (Existing Section 2079.1(f)-(h))**
- **Proposed Section 64655 (Existing Section 2830)**
- **Proposed Section 64660 (Existing Section 2831)**
- **Proposed Section 65055 (Existing Section 1855(b))**

- **Proposed Section 65690 (Existing Section 1799.1(d))**
- **Proposed Sections 71000 and 71005 (Existing Section 5653(g))**

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 2022-22.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
39950	8494(a)	no comment	no comment
53830	1909	no comment	Assuming the reference in the Note to sec. 6656 should be to sec. 1909, the proposed restatement of sec. 1909 would not cause a substantive change in the meaning of the provision.
53855(d)	1913(c)	no comment	CDFW agrees that the reference to sec. 1903.5 is incorrect, but disagrees the reference should be replaced with the second sentence of sec. 1904. CDFW suggests the reference to sec. 1903.5 be deleted without reference to another section because CDFW cannot confirm what the legislature intended by the reference.
54040	6657	FGC agrees that substituting the term "royalty" in sec. 6657 for "privilege tax" is appropriate.	CDFW agrees that the use of the term "royalty" in sec. 6657 to replace "privilege tax" is appropriate.
54055	6652	CLRC note (1): FGC believes that the proposed restatement of sec. 6652 would not result in a substantive change in the meaning of the provision. CLRC note (2): FGC believes that inserting "deliver to the department" in sec. 6652 in place of "render" would not cause any problems. However, FGC notes that the proper regulation reference is sec. 165(b)(3)(B), Title 14, California Code of Regulations.	Two comments: (1) CDFW does not believe the restatement of sec. 6652 would result in a substantive change. (2) CDFW does not believe inserting "deliver to the department" in sec. 6652 in place of "render" causes any problems, however CDFW notes that CLRC has misstated 14 CCR section 165(b)(3)(G). The proper regulation reference section is 165(b)(3)(B).
54105	6704	FGC believes that the language "entered into or renewed, on and after January 1, 1985," can be deleted from sec. 6704 as it is obsolete.	The language "entered into or renewed, on and after January 1, 1985," can be deleted from sec. 6704. Obsolete
54110	6705	FGC believes that sec. 6705 can be repealed as it is obsolete.	Sec. 6705 can be repealed. Obsolete.
54120	6707	FGC believes that the language "entered into, or renewed, on and after January 1, 1985," can be deleted from sec. 6707 as it is obsolete.	The language "entered into, or renewed, on and after January 1, 1985," can be deleted from sec. 6707. Obsolete.
54575	1930.5(f)	no comment	CDFW agrees that the definitions in sec. 1930.5(f) should be generalized to apply to the chapter.
55830	2786	no comment	While CDFW has no comment on the CLRC's authority to amend a statute enacted by initiative, CDFW believes the reference in

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
			sec. 2786(c) to "commencing with Section 2721" was purposeful and should not be changed. Sec. 2721 relates to expenditures only pursuant to funds appropriated under, and for the purposes of, sec. 2720(a) and specifically excludes other funds and conservation purposes listed in sec. 2720(b)-(c). Therefore, the voters' intent in adopting sec. 2786 may have been to exclude sec. 2720 and only incorporate the reference to sec. 2720(a) as included in sec. 2721. This is supported, in part, by the voters exclusion of other sections including 2722, 2723(a), 2724, and 2729. CDFW supports the inclusion of the phrase "of Chapter 7.5,".
55885	2797	no comment	CDFW agrees that the second paragraph and subdivision (b) of sec. 2797 should not be deleted.
56105	1771	no comment	CDFW believes the correct reference in sec. 1771 is Division 2, Part 10.2, Chapter 3, Article 5 of the Rev. & Tax Code.
56110	1772	no comment	CDFW believes the correct reference in sec. 1772 is Division 2, Part 10.2, Chapter 3, Article 5 of the Rev. & Tax Code.
56535	3406(a)	FGC agrees that the reference in sec. 3406 to regulations adopted pursuant to this section is correct. However, changing the scope of the reference is outside the scope of the current review.	The reference in sec. 3406 to regulations adopted pursuant to "this section" is correct. To the extent that this Note relates to the reorganization of sec. 3406, it is beyond the scope of CDFW's review at this time.
56585	3407	FGC believes the correct reference in sec. 3407 should be to "Section 708.6 of Title 14 of the California Code of Regulations."	The correct reference in sec. 3407 should be to sec. 708.6 of Title 14.
56710	3462	no comment	The reference in sec. 3462(a) can be amended from "division" to "article". "Division" is overly broad.
56720	3466	no comment	The reference in sec. 3466 can be amended from "division" to "article". "Division" is overly broad.
56815	2941	no comment	CDFW agrees that the definitions in sec. 2941 also apply to Article 1 of Chapter 13.
56820	2945	no comment	This is a significant substantive change that is not beneficial because by expanding the sections which are subject to sec. 2945, there would be a conflict with existing sec. 2931.5. Sec. 2931.5 prevents the exercise by the Department of Water Resources of its statutory mandate to regulate the construction of dams under Water Code Division 3 (commencing with section 6000). Without sec. 2931.5, impoundments to

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
			create barriers at the Salton Sea would likely fall within the definition of "dam" in Water Code sec. 6002, and so would be subject to regulation by the Department of Water Resources.
56825	2942	no comment	This is a significant substantive change because it is inconsistent with the legislative history and statutory purpose of Article 1. Sections 2930, 2931, 2932, and 2933 provide statutory authority for the state to carry out its responsibilities under the Quantification Settlement Agreement (QSA). The legislation enacting these statutes, Senate Bill No. 277 (2003-2004 Reg. Sess.), was enacted as a part of a legislative package specifically intended to facilitate the implementation of the QSA and related agreements. Therefore it would be inaccurate to state that nothing in Article 1 of Chapter 13 alters any state responsibility under the QSA or the state's authority to carry out any responsibility under the QSA, since the express purpose of Senate Bill No. 277 was to facilitate implementation of the QSA and related agreements by providing the state with authority to carry out its obligations under the QSA.
58505	10503	FGC believes that sec. 10503(b) and (c) express general powers of the Commission and are not limited to refuges.	CDFW believes that sec. 10503(b) and (c) express general powers of the Fish and Game Commission and are not limited to refuges.
58740	10844	FGC believes that the provision in subdivision (b) related to submitting the report on or before January 1, 2011 is obsolete and can be deleted; the report is available at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=82677&inline	Sec 10844 can be repealed because CDFW prepared the required report in compliance with this provision. Obsolete.
58800	10820	no comment	Two comments. (1) The use of the term "district" to describe refuges is potentially confusing because "district" is more commonly used to describe the areas covered by sec. 11000 et seq. CDFW believes that the references to whether a refuge is for fish, game, or fish and game are correct in existing law. (2) CDFW believes that giving the game refuges descriptive names is a significant substantive change in that it is not clearly beneficial and would be controversial.
59255	10843	FGC believes the language "or 4500.5" at the end of the second paragraph of sec. 10843 can be repealed since sec. 4500.5 was repealed by the legislature in 1975.	The language "or 4500.5" at the end of the second paragraph of sec. 10843 can be repealed. Obsolete.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
59455	10653	The reference in sec. 10653 to "San Francisco Game Refuge" is designated in sec. 10771 as San Francisco Fish and Game Refuge; FGC believes, therefore, that sec. 10653 should be amended to read "San Francisco Fish and Game Refuge."	The reference in sec. 10653 is to the San Francisco Game Refuge described in sec. 10771 and should be amended to include "Fish and".
59460	10654	The reference in sec. 10654 to "San Francisco Game Refuge" is designated in sec. 10771 as San Francisco Fish and Game Refuge; FGC believes, therefore, that sec. 10653 should be amended to read "San Francisco Fish and Game Refuge."	The reference in sec. 10654 is to the San Francisco Game Refuge described in sec. 10771 and should be amended to include "Fish and".
59790	10667	FGC agrees that reference to "section" in sec. 10667(e) can be changed to "article" without a change in meaning; however, FGC believes no other portion of Article 2 has relevance or applicability to sec. 10667 and does not see the benefit in changing the reference. More importantly, sec. 10667 is obsolete per actions by FGC under the Marine Life Protection Act and the Marine Managed Areas Improvement Act to repeal, modify and adopt marine protected areas to create a statewide system; therefore, any reference in Fish and Game Code to the Dana Point Marine Life Refuge, including sec. 10667, should be repealed consistent with legislative intent.	CDFW agrees that the reference to "section" in sec. 10667(b) can be changed to "article" without causing a change in the meaning of the section. However, the CLRC should be aware that this section is obsolete in that it has been superseded by Title 14, sec. 632(b).
59795	10667	FGC believes that reference to "section" in sec. 10667(e) can be changed to "article" without a change in meaning; however, FGC believes no other portion of Article 2 has any relevance or applicability to sec. 10667 and does not see the benefit in changing the reference. More importantly, sec. 10667 is obsolete per actions by FGC under the Marine Life Protection Act and the Marine Managed Areas Improvement Act to repeal, modify and adopt marine protected areas to create a statewide system; therefore, any reference in Fish and Game Code to the Dana Point Marine Life Refuge, including sec. 10667, should be repealed consistent with legislative intent.	CDFW agrees that the two references to "section" in sec. 10667(e) can be changed to "article" without causing a change in the meaning of the section. However, the CLRC should be aware that this section is obsolete in that it has been superseded by Title 14, sec. 632(b).
60510	2854	Based upon legislative history, FGC believes "workgroup" refers to the State Interagency Marine Managed Areas Workgroup; sec. 2854 was enacted in 1999 with the full reference, but was amended in 2004 to its current version, where the specific reference was reduced to "workgroup." FGC believes sec. 2854	The term "workgroup" refers to the State Interagency Marine Managed Areas Workgroup and sec. 2854 should be amended to use this full reference. Sec. 2854 was initially enacted in 1999 with explicit reference to the State Interagency Marine Managed Areas Workgroup. The code section when amended in 2004 to its

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
		should be amended to use the full reference and avoid confusion.	present version deleted the explicit reference, but retained the term "workgroup."
60520	2859	FGC believes the existing language retains value, even though the section is technically obsolete. The review and adoption processes identified in sec. 2859 are important context for future plan amendments or updates.	While it is technically accurate that this section is obsolete, CDFW does not want the language deleted because it believes that having ready access to the language (e.g. it's still in the code) is valuable for the future. For example, language on how a plan was originally developed can inform how plans may be amended or updated in the future.
60525	2857	FGC believes the existing language retains value, even though the section is technically obsolete. The specific siting objectives and guidelines identified in sec. 2857 are important context for ongoing adaptive management and future planning efforts.	While it is technically accurate that this section is obsolete, CDFW does not want the language deleted because it believes that having ready access to the language (e.g. it's still in the code) is valuable for the future. For example, language and guidelines on how a marine protected area network was sited can inform future planning, such as for development of a master plan under sec. 2865.
60700	1500	no comment	CDFW believes that the references in sec. 1500 as allowing the sale or exchange of "portions of" properties is more clear than deleting that phrase. It makes clear that the sale or exchange need not cover the entire area or range. Further, CDFW believes that the references in that section to both "areas" and "ranges" cannot be shortened to "areas" because two of the properties to which that section applies are called "ranges". See sec. 1500 (a) and (b). The remainder of the changes to the first paragraph of sec. 1500 do not substantively change the meaning of that section.
60705	1500.5	no comment	The restatement of sec. 1500.5 does not cause a substantive change in the meaning of that section.
60955	10741	FGC believes that restating sec. 10741 does not cause any problems, with one exception; access "over" a road or trail is significantly different from access "to" a road or trail, thereby effecting a change in meaning. FGC does not believe a change in meaning is appropriate without further public dialogue.	The restatement of sec. 10741 does not cause a substantive change in the meaning of that section except CDFW believes that access "over" a road or trail is different from access "to" a road or trail and that does cause a change in meaning.
62020	2053	no comment	no comment
62128	2064.5	no comment	no comment
62370	2074.2(d)	FGC believes that the proposed restatement does not improve clarity and could be interpreted as reducing FGC's discretion to separately continue deliberations and hold further public	The restatement of sec. 2074.2(d) does not improve clarity and appears to be a significant substantive change in the section that is not beneficial and would be controversial because, among other things,

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
		hearing, which is a significant substantive change. The proposed change to passive voice also reduces clarity.	it moves the clause that specifies over what decisions the Fish and Game Commission has discretion.
62400	2074.6	FGC believes that the proposed restatement of the first sentence of sec. 2074.6 does not change the meaning of the sentence.	The restatement of the first sentence of sec. 2074.6 to clarify the application of the provision does not change the meaning of that sentence.
62420	2074.8	(1) FGC believes the second sentence of sec. 2074.8 can be repealed as it is redundant of 2074.6. (2) FGC has the authority to extend the time for completing the final report, but only if the director determines that an extension is necessary to complete the independent peer review; as such, FGC believes the third sentence should be retained, but could be revised for greater clarity.	Two comments. (1) The second sentence of sec. 2074.8 can be repealed. Redundant. (2) The Fish and Game Commission has the authority to extend the time for completion of the final report but only if the director determines that an extension is necessary to complete the independent peer review.
62470	2075.5	FGC believes that the proposed restatement does not improve clarity and could be interpreted as reducing FGC's discretion to separately continue deliberations and hold further public hearing, which is a significant substantive change. The proposed change to passive voice also reduces clarity.	The restatement of sec. 2075.5(d) does not improve clarity and appears to be a significant substantive change in the section that is not beneficial and would be controversial because, among other things, it moves the clause that specifies over what decisions the Fish and Game Commission has discretion.
62500	2077(a)	no comment	no comment
62505	2077(b)	no comment	no comment
62600	2080	no comment	Note is informational only. No comment.
62665	2084	no comment	Note is informational only. No comment.
62700	2081(b)-(e)	no comment	Note is informational only. No comment.
62705	2081.1	no comment	Note is informational only. No comment.
63305	2081.7(b)-(d)	no comment	CDFW does not agree that the reference to Chapter 10 in existing sec. 2081.7(d)(4) is erroneous. The existing section properly refers to take authorized under an NCCP (See, e.g., sec. 2835). The proposed correction would also be redundant with sec. 2081.7(d)(1). The proposed correction would cause a problem by changing the meaning of the statute to refer to take authorized under secs. 2080 et seq. instead of take authorized under sec. 2800 et seq.
63310	2081.7(e)(1)-(3)	no comment	Sec. 2081.7(e)(1)-(3) can be repealed. Obsolete.
63355	2080.3	no comment	CDFW agrees with the proposed correction. Existing sec. 2080.3(a)(2)

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
			was intended to refer to existing sec. 2080.3(a)(1). CDFW recommends referring more precisely to "paragraph (1) of subdivision (a)" instead of "paragraph (1)" to avoid confusion and maintain consistency with the existing statute, particularly since the statute references paragraph (1) of a different code (Title 16 of the U.S.C.) in subdivision (a).
63475	2081.11	no comment	Note is informational only. No comment.
63510	2081.12	no comment	Note is informational only. No comment. The Note appears to contain a typo because it refers to sec. 2018.12 instead of sec. 2081.12.
63600	2081.2(a)	no comment	Note is informational only. No comment.
63610	2081.2(e)	(1) FGC does not have any concerns with the proposed change, which would update the term "effective date of this section" to the section's enactment date (9/13/19). (2) No comment on the informational note.	Two comments. (1) CDFW does not see any issue with the proposed change which would update the term "effective date of this section" to the section's enactment date (9/13/19). (2) Note is informational only. No comment.
63625	2081.2(d)	no comment	Note is informational only. No comment.
63630	2081.2(f)(3)	no comment	Note is informational only. No comment.
63750	2086(a)	no comment	The last sentence of sec. 2086(a) can be repealed. Obsolete.
63910	2089.4	no comment	no comment
63915	2089.2(c)-(d)	no comment	no comment
63930	2089.22	no comment	no comment
63950	2089.6	no comment	no comment
64075	2089.5	no comment	no comment
64100	2079.1(a)-(b)	no comment	no comment
64105	2079.1(c)-(e)	no comment	no comment
64110	2079.1(f)-(h)	no comment	no comment
64600	2821	no comment	CDFW believes this proposed change would cause problems because its legal interpretation of existing law is that a finding is required for every section of 2820, not just subsections (a) and (b). CDFW's practice has been to make findings for every section of 2820, including sections 2820(c)-(f). All subsections of 2820 are relevant.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
64655	2830	no comment	Two comments: (1) and (2) CDFW does not think the proposed approach of continuing the references to sec. 2820 in sec. 2830(e) and sec. 2810 in sec. 2830(f)(1) is overbroad because it best matches the existing law and, therefore, the intent of the legislature.
64660	2831	no comment	Sec. 2831 would not be better located elsewhere because it relates to the NCCP Act. Legislative declarations that went with the section when it was first enacted (Stats 2007 ch 644 as amended by Stats 2012 ch 275) make clear how this section relates to the NCCP Act.
65055	1855(b)	no comment	CDFW agrees that the reference in sec. 1855(b)(1) to "Section 1602" can be amended to "Section 1602, subdivision (a)" and that change will not have any negative effects.
65060	1855(c)	no comment	Two comments. (1) The last sentence of sec. 1855(c) can be changed from "section" to "title" as this is the appropriate scope for this reference. (2) CDFW does not support CLRC's proposal to eliminate a cross reference to current sec. 1602 in a list of statutes in sec. 1855(c) which can require compensatory mitigation. This change is significant, substantive, incorrect, and would fundamentally undermine the LSAA program. CDFW has authority to require compensatory mitigation under sec. 1602 and frequently does. This is supported by the text of the statute and has been CDFW's interpretation for more than forty years.
65465	1798(e)	no comment	The reference to sec. 1798(a) is not erroneous. If CDFW determines that a bank prospectus is unacceptable, sec. 1798(e)(2) is intended to give the applicant the option to resubmit pursuant to 1798(a) or 1798(b). CDFW proposes that sec. 1798(e)(2) be amended to state: "The prospectus may be resubmitted in accordance with subdivision (a) or (b) if further consideration is desired. Any resubmittal must be accompanied by payment of a new review fee."
65500	1798.5(a)(1)	no comment	CDFW agrees that the reference to sec. 1799.1(b) is erroneous, and the correct reference is to sec. 1799.1(c).
65550	1798.6(a)	no comment	CDFW agrees that the reference to sec.1799.1(b) is erroneous, and the correct reference is to sec. 1799.1(c).
65585	1798.6(b)	no comment	Neither secs. 1798.6(b) nor 1798.6(g) can be

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
			deleted as redundant. They relate to different events in the process of reviewing an amendment.
65690	1799.1(d)	no comment	DFW disagrees that the reference to secs. 1798.5, 1798.6 and 1799 in sec. 1799.1(d) should be changed to "this title". These sections are not currently in a title. To the extent that the change is caused by the reorganization of the code, it is beyond the scope of CDFW's review at this time.
66800	5654(a)	FGC notes that the proposed restatement of sec. 5654(a)(1) removes from the first sentence "of notification" to the director. FGC believes the proposed restatement is a significant substantive change as the 24-clock should start for the director upon "notification" of the spill, which is not beneficial and would lead to unintended consequences; without notification, arguably the clock starts when the spill actually occurs, not when the director has received notice of it.	CDFW disagrees there is no substantive change in the restatement of sec. 5654(a)(1). The restatement leaves out "of notification". The 24-clock should start for CDFW and ultimately OEHHA upon "notification" of the spill. Without "of notification", arguably the clock starts when the spill actually occurs - not when CDFW has notice of it.
66810	5654(d)	FGC believes that subdivision (f) does not have "testing" requirements and, therefore, the cross-reference can be deleted from sec. 5654(d).	The proposed restatement of sec. 5948 does not cause any substantive changes in the meaning of the section or create any problems.
67505(a)	13011	no comment	Three comments: (1) CDFW agrees that existing sec. 13011(a) has an erroneous reference to sec. 5600 (which does not exist), and should be amended to sec. 5650. (2) CDFW disagrees that the reference in sec. 13011 to existing "Part 1... of Division 6" should be changed to sec. 5523 which covers fish closures. Sec. 13011 is about recovery of certain damages and penalties, not closures. (3) For comment 3, see response to proposed sec. 67505(b).
67505(b)	12017	no comment	Three comments: (1) & (2) see other reference to proposed sec. 67505. (3) CDFW agrees that the reference to sec. 13001 in sec. 12017(a) can be amended to "Section 13001, subdivision (a)."
67525	13013	no comment	CDFW agrees that the language in sec. 13013(c) can be deleted ("paid from the accounts...Section 13230,") because there are no accounts established by the referenced subsections.
68000	5900	no comment	Although the defined term, "owner" is not used in sec. 5933, sec. 5933 includes reference to a permitting program under the Water Code that, itself, includes a definition of "owner" that excludes the United States. (See Water Code section 6005.) To avoid

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
			any inconsistency, CDFW recommends retaining in this provision the reference that the United States is excluded from the definition of "owner" for the purposes of sec. 5933.
68100	5948	FGC believes the proposed restatement of sec. 5948 does not cause any problems.	The proposed restatement of sec. 5948 does not cause any substantive changes in the meaning of the section or create any problems.
68105	5901	FGC agrees that references to districts 1 7/8 and 2 3/4 can be removed from sec. 5901 because those districts are not defined in Fish and Game Code.	CDFW agrees that references to Districts 1 7/8 and 2 3/4 can be removed from sec. 5901 because those districts are not defined in the Code.
68600	5946	no comment	The provision in sec. 5946 relating to compliance with sec. 5937 as a condition for issuance of permits or licenses to appropriate water should not be eliminated as obsolete. This is an important, substantive limitation in the existing code. CDFW believes the language should be updated to reference the State Water Resources Control Board, which is the state agency with authority to issue permits or licenses to appropriate water, and is the successor to the State Water Rights Board.
68800	5980	no comment	Two comments: (1) CDFW considers the reference in sec. 5980 to conduits described in sec. 5987 to refer to conduits that are used in the production, generation, transmission, delivery, or furnishing of electricity. The second sentence of sec. 5980 discusses the unique fishery impacts of conduits that involve the passage of water through power devices, and the impacts of large conduits. Conduits used in power generation appear to be identified specifically, regardless of their size. To make this clear, in sec. 5980 the phrase "described in Section 5987" in the first sentence of that section could be replaced with "used by a person in the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power". Therefore, the first sentence of sec. 5980 would read, "This article shall apply only to conduits used by a person engaged in the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and conduits with a maximum flow capacity over 250 cubic feet per second of water." (2) CDFW agrees that the article applies to either conduits used in power generation or conduits with a maximum flow capacity over 250 cubic feet per second.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
68850	5981	no comment	The proposed restatement of the first sentence of sec. 5981 would not create any problems.
69000	6020	no comment	CDFW considers the reference to conduits described in sec. 5987 to refer to conduits that are used in the production, generation, transmission, delivery, or furnishing of electricity. The second sentence of sec. 5980 discusses the unique fishery impacts of conduits that involve the passage of water through power devices, and the impacts of large conduits. Conduits used in power generation appear to be identified specifically, regardless of their size. As a result, they are addressed by the screening requirements in secs. 5980 through 5993, and, even if smaller than 250 cubic feet per second, are not addressed by secs. 6020 through 6028.
69065	6023	no comment	The proposed restatement of sec. 6023 would not cause any problems.
69505	6100(b)	no comment	The proposed restatement of sec. 6100(b) would not cause any problems.
69775	1608	no comment	The reference in existing sec. 1608 to the submission of "notification pursuant to Section 1602" may be narrowed to refer to "subdivision (a) of Section 1602" without causing problems.
69880	1605(h)	no comment	The reference in existing sec. 1605(h) to "this paragraph" should more precisely be revised to "this subdivision." The "request" referenced in the last sentence of sec. 1605(h) refers to the "written request" identified in the immediately preceding sentence of sec. 1605(h). "Subdivision" is consistently used throughout the Lake and Streambed Alteration statutes.
70165	1602(d)	no comment	Two comments: (1) The reference in existing sec. 1602(d) to a "draft streambed alteration agreement" may be narrowed to refer to sec. 1602(a) without causing problems. (2) Narrowing the reference "a violation of this section" in sec. 1602(d)(3) to sec. 1602(a) is incorrect. As used in sec. 1602(d)(3), "section" is intended to refer to sec. 1602(d), and therefore should actually read "a violation of this subdivision."
71000	5653(g)	no comment	The existing definition in sec. 5653(g) is limited appropriately to secs. 5653 and 5653.1. CDFW is not commenting on the relocation of the definition to the new title because that relates to the reorganization of the code, which is beyond the scope of CDFW's review at this time.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
71005	5653(g)	no comment	CDFW is not commenting on extending the exception in sec. 5653(g) to the new title because it is beyond the scope of CDFW's review at this time
71060	5653.7	no comment	Sec. 5653.7 properly refers to permits issued pursuant to sec. 5653, with the latter section addressing CDFW's authority to issue permits. There is no need to narrow the reference.
71075	5653.3	no comment	The CLRC Note incorrectly refers to sec. 5653.7 but appears to relate to sec. 5653.3. CDFW believes that sec. 5653.3 properly refers to permits issued pursuant to sec. 5653 and there is no need to narrow that reference.
71260	5653(f)	no comment	CDFW believes that the reference in sec. 5653(f) to "permits issued pursuant to this section" is clear and does not need to be narrowed.
71280	5653.1	no comment	Two comments. (1) Section 5653.1(b) is not obsolete because CDFW has not made the required certification. (2) Section 5653.1(c) can be repealed. Obsolete.
71500	3005(b)(3), 3800(b)(3)	no comment	CDFW agrees sec. 3800(b)(3) includes language not present in sec. 3005(b)(3). CDFW believes that in the absence of existing regulations by either the Fish and Game Commission or CDFW it is better to delete the language highlighted in the Note in sec. 3800(b)(3), as opposed to transplanting it to sec. 3005(b)(3). An alternative would be to leave the existing sections as they are.
71760	5800(c)	no comment	CDFW agrees the last sentence in sec. 5800(c) is ambiguous with respect to the source of water at issue and the nature of the clean-up. The subdivision could be amended to say, "... for the purpose of cleaning up mining equipment, subject to the restrictions of this section."
71765	5800(d)	no comment	CDFW agrees that the restatement of sec. 5800(d) would not substantively change the meaning of that section or cause any problems.