

First Supplement to Memorandum 2022-22

Fish and Game Law: Phase One Public Comment

In Memorandum 2022-22,¹ two proposed revisions intended to be presented in the first section of that memorandum (“Changes That Should Be Made”) were inadvertently omitted.

The omitted presentation of those revisions follow.

Proposed Section 27405 (Existing Section 2185)

Proposed Section 27405 would continue existing Section 2185(a).

A Commission Note following the proposed section identified an obsolete cross-reference in the existing section, and invited comment on a proposed correction.

In response, both commenting agencies, the Fish and Game Commission (hereafter, “FGC”) and the Department of Fish and Wildlife (hereafter, “DFW”), agreed that the identified cross-reference was obsolete, and should be corrected as proposed by the Commission.

The staff recommends that the Commission provisionally approve the following revision of existing Section 2185 for inclusion in the draft recommendation:

§ 2185 (amended). Notification of law enforcement of arriving wild animal

2185. (a) Any person who transports, receives, or imports into the State, or transports within the State, any live wild animal enumerated in or designated pursuant to Section 2118, shall hold said animal in confinement for inspection and immediately notify the nearest enforcing officer of the arrival thereof. If there is found in any shipment any species not specified in the permit issued under this chapter, or more than the number of any species specified, said

1. Any California Law Revision Commission document referred to in this supplement 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.

animals shall be refused admittance as provided in Section ~~2188~~ of ~~this chapter~~ 2189.

(b) Notwithstanding Section 2117, for the purposes of this section, “enforcing officer” means the enforcement personnel of the department, the state plant quarantine officers, and county agricultural commissioners.

Comment. Section 2185 is amended to update an obsolete cross-reference.

Proposed Section 63355 (Existing Section 2080.3)

Proposed Section 63355 would continue existing Section 2080.3.

A Commission Note following the proposed section identified an apparently incorrect internal cross-reference in the section, and invited comment on a proposed correction.

In response, DFW agreed with the correction proposed by the Commission, although it recommended that the correction be expressed in nonconventional statutory form, to avoid confusion. The staff believes any confusion to be unlikely, and therefore respectfully declines DFW’s suggestion in order to allow for standardized drafting practice.

FGC did not comment on the Note.

The staff recommends that the Commission provisionally approve the following revision of existing Section 2080.3 for inclusion in the draft recommendation:

§ 2080.3 (amended). Enhancement of survival permit

2080.3. (a) Notwithstanding any other provision of this chapter, if any person obtains from the Secretary of Commerce an enhancement of survival permit pursuant to Section 1539(a)(1)(A) of Title 16 of the United States Code that authorizes the taking of spring run Chinook salmon (*Oncorhynchus tshawytscha*) in order to establish or maintain an experimental population in the San Joaquin River pursuant to subsection (j) of that section and the San Joaquin River Restoration Settlement Act (Part I of Subtitle A of Title X of Public Law 111-11), no further authorization or approval is necessary under this chapter for that person to take that species as identified in, and in accordance with, the enhancement of survival permit, if all of the following requirements are met:

(1) That person shall notify the director in writing that the person has received an enhancement of survival permit and include in the notification a copy of the permit.

(2) Upon receipt of the notice specified in paragraph (1) ~~of subdivision (c)~~, the director shall immediately have the notice

published in the General Public Interest section of the California Regulatory Notice Register.

(3) Within 30 days after the director has received the notice specified in paragraph (1), the director shall determine whether the enhancement of survival permit will further the conservation of the species. As used in this paragraph, "conservation" has the same meaning as defined in Section 2061.

(4) The director shall immediately have the determination pursuant to paragraph (3) published in the General Public Interest section of the California Regulatory Notice Register.

(b) The timing and extent of a take authorization under this section shall be limited to the terms in the federal enhancement of survival permit and shall expire upon the expiration of the federal permit.

(c) This section shall remain in effect only until the effective date of an amendment to Section 1539 of Title 16 of the United States Code that alters the requirements for issuing an enhancement of survival permit, as applicable, and as of that date is repealed, unless a later enacted statute, that is chaptered before the date this section is repealed, deletes or extends that date.

Comment. Paragraph (2) of subdivision (a) of Section 2080.3 is amended to correct an erroneous cross-reference.

Subdivision (c) is also amended to make a technical correction.

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 the First Supplement to Memorandum 2022-22.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
27405	2185(a)	FGC concurs that the reference in sec. 2185 to sec. 2188 is obsolete and should be changed to sec. 2189.	The reference in sec. 2185 to sec. 2188 should be repealed. Obsolete. The reference should be changed to sec. 2189.
63355	2080.3	no comment	CDFW agrees with the proposed correction. Existing sec. 2080.3(a)(2) 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).