

Fifth Supplement to Memorandum 2022-30

Fish and Game Law: Narrow Reorganization in Place (Additional Discussion)

The Commission¹ received emailed input from Wendy Bogdan on April 27, 2022. While the email expressly requested that the message be distributed to the Commission, the staff overlooked that request. **We regret the error.** The message is attached, along with an Exhibit that was attached. It will be handed out to Commissioners ahead of today's meeting.

Respectfully submitted,

Brian Hebert
Executive Director

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.

**EMAIL FROM WENDY BOGDAN,
DEPARTMENT OF FISH AND WILDLIFE
(4/27/22)**

Brian – Thank you for our conversation the other week. Informed by that discussion, we spent several hours conducting a preliminary review of Memo 22-30. Although it was not a comprehensive review, our notes are attached and we hope that you will share them with your staff and the Commission as an indication of the challenges associated with any reorganization. The distinction between conservation and hunting/fishing is contrary to the Department's policies, creates a false dichotomy, and misunderstands many of the Department's activities. Even if one accepted that distinction, some of the proposed changes do not advance it. While we will continue to work with the CLRC on the pending proposed modifications to text-in-place, and will appear at the May meeting, consistent with the Director's June 8, 2021 letter our staff will otherwise turn to mission-based activities and will no longer be able to provide the level of staffing on the reorganization that we have provided to date.

Wendy **Bogdan** (she/her)
General Counsel
Office of General Counsel
California Department of Fish and Wildlife
916-207-9580

Please note that as of September 1, 2021 the Office of General Counsel has relocated to:

*715 P Street
Sacramento, CA 95814*

Attachment C
Examples of MM 22-30 Proposed Changes that Would Not Be
"Plainly Beneficial", Present a Significant Risk of Unintended Consequences, or are
Controversial

A. CLRC Basic Proposal

Division 2. Department of Fish and Wildlife

Chapter 1. Organization and General Functions

~~Chapter 1.5. Wildlife Violator Compact~~

Chapter 2. Deputies, and Other Employees; County Wardens

Chapter 3. Other Powers and Duties

~~Chapter 4. Department-Managed Lands~~

Division 2.5 Wildlife and Habitat Conservation

~~Chapter 4. Chapter 1.~~ Wildlife Conservation Law of 1947

~~Chapter 4.1. Chapter 2.~~ California Riparian Habitat Conservation Program

~~Chapter 4.3. Chapter 3.~~ Inland Wetlands Conservation Program

~~Chapter 4.4. Chapter 4.~~ California Desert Conservation Program

Chapter 5. Fish and Game Management

Chapter 6. Fish and Wildlife Protection and Conservation

Chapter 6.5. Habitat Restoration and Enhancement Act

Chapter 6.6. Voluntary Stream Restoration Property Owner

Liability

Chapter 7. Conservation of Aquatic Resources

~~Chapter 7.2. Trout Management~~

~~Chapter 7.3. Black Bass Conservation and Management~~

~~Chapter 7.4. Department-Managed Lands~~

Chapter 7.5. Native Species Conservation and Enhancement

Chapter 7.8. Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993

Chapter 7.9. Conservation Bank and Mitigation Bank

Applications and Fees

Chapter 8. Conservation of Wildlife Resources

Chapter 9. Advance Mitigation and Regional Conservation

Investment Strategies

Chapter 10. Native Plant Protection

Chapter 11. California Desert Native Plants

Chapter 12. Significant Natural Areas

Chapter 13. Nonvehicular Wildlife Crossings

Chapter 13.5. Wildlife Connectivity Actions

Division 6. Fish

Commented [A1]: This chapter heading for Div. 2.5, Chapter 2.4 is misleading. The sections within the Chapter have very little to do with Department-Managed Lands. This chapter only contains three sections related to contracts and leases, and it does not include most of the sections relating to our lands, which are in Chapter 5 of Division 2 (Fish and Game Management). That is the chapter about wildlife areas and ecological reserves. As a result, the proposed move doesn't achieve the purpose proposed by the memo.

Commented [A2]: Wouldn't want to move this to fishing - chapter 7.2 pertains to conservation not fishing.

Commented [A3]: Might be moved, but the fact that the Legislature labeled the Chapter to be a conservation law (the Black Bass Conservation and Management Act of 1980) demonstrates the extent to which the Legislature views fishing as intrinsic to, rather than distinguishable from, conservation, and I would be hesitant to second guess that.

Commented [A4]: See note above. This Chapter doesn't include general lands/lands management sections.

...
Part 2. Sport Fishing

...
Chapter 2. Particular Varieties of Fish

...
Article 1.4. Trout Management

Commented [A5]: Please see note above.

...
Article 8. Black Bass Conservation and Management

Commented [A6]: Please see note above.

Division 11. Pacific Marine Fisheries Compact

Division 12. Aquaculture

Division 12.5. Wildlife Violator Compact

Division 13. State-Tribal Agreements Governing Indian Fishing

Division 13.5. State-Tribal Agreements Governing Indian Fishing on the Klamath River

B. CLRC Basic Proposal + Option 1 (Consolidation of Proposed New Division 2.5 with Existing Division 3) Yellow Highlighting Indicates Differences from CLRC Basic Proposal

Division 2. Department of Fish and Wildlife

Chapter 1. Organization and General Functions

Chapter 1.5. Wildlife Violator Compact

Chapter 2. Deputies, and Other Employees; County Wardens

Chapter 3. Other Powers and Duties

Chapter 4. Department-Managed Lands

Division 2.5 Wildlife and Habitat Conservation

Chapter 4. Chapter 1. Wildlife Conservation Law of 1947

Chapter 4.1. Chapter 2. California Riparian Habitat Conservation Program

Chapter 4.3. Chapter 3. Inland Wetlands Conservation Program

Chapter 4.4. Chapter 4. California Desert Conservation Program

Chapter 5. Fish and Game Management

Chapter 6. Fish and Wildlife Protection and Conservation

Chapter 6.5. Habitat Restoration and Enhancement Act

Chapter 6.6. Voluntary Stream Restoration Property Owner Liability

Chapter 7. Conservation of Aquatic Resources

Chapter 7.2. Trout Management

Chapter 7.3. Black Bass Conservation and Management

Chapter 7.4. Department-Managed Lands

Chapter 7.5. Native Species Conservation and Enhancement

Chapter 7.8. Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993

Chapter 7.9. Conservation Bank and Mitigation Bank Applications and Fees

Chapter 8. Conservation of Wildlife Resources

Chapter 9. Advance Mitigation and Regional Conservation Investment Strategies

Chapter 10. Native Plant Protection

Chapter 11. California Desert Native Plants

Chapter 12. Significant Natural Areas

Chapter 13. Nonvehicular Wildlife Crossings

Chapter 13.5. Wildlife Connectivity Actions

Division 3. Fish And Game Generally

Chapter 1. Taking and Possessing in General

Chapter 1.5. Endangered Species

Chapter 2. Importation, Transportation, and Sheltering of Restricted Live Wild Animals

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Commented [A10]: See note above. This Chapter doesn't include general lands/lands management sections.

Commented [A11]: The proposal is to integrate all the bold contents in Division 3, into the new Division 2.5 above, and redistribute the remaining chapters to other parts of the code such as Division 4.

Commented [A12]: The proposal is to move 2000-2024 into Division 4. Chapter 1 (especially sections 2000 and 2002) makes most organizational sense in its currently location as these provisions apply generally rather than to fishing/hunting. As such, all these sections fit in this general, catch-all conversation Division. Some examples:

2000 in particular is a cornerstone of the Department's authority and not specific to hunting and fishing. It is a commonly-cited violation by our wildlife officers, and it sets the baseline standard for the rest of the code. As a foundational statute relating to take, having it early in the code (i.e., where it currently is) makes sense. Second, we should not disturb the status quo with the code unless there is a compelling reason to do so, and there is no compelling reason to move Section 2000. It does not clearly belong in any other section, and it does relate to "fish and game generally". Third, it would be either confusing or a potentially significant, substantive change if Section 2000 was moved to any part of the code that did not address birds, mammals, fish, reptiles, and amphibians. Division 4, the location to which CLRC proposes moving these, relates to "birds and mammals". Having a prohibition on take of fish, reptiles, and amphibians in that section would be confusing at best and could lead to a reinterpretation of the section to limit the prohibition on take of those classes of animal at worst.

2001 applies to possession generally, regardless of whether the possession relates to fishing and hunting.

Similarly, 2002 is much broader than fishing or hunting. It applies to all possession for any purpose. As compared to CESA which is not heavily cited by wildlife officers, sections 2000 and 2002 are used on a regular basis in criminal citations.

... [1]

Chapter 3. Importation and Transportation of Live Plants and Animals
 Chapter 3.5. Aquatic Invasive Species
 Chapter 4. Importation and Transportation of Dead Birds, Mammals, Fish, Reptiles, and Amphibia
 Chapter 5. Hunting and Fishing Guides
 Chapter 6. Capture, Transport or Sale of Wild Rodents
 Chapter 6.5. Control of Illegally Taken Fish and Wildlife
Chapter 7. Fish and Wildlife Habitat Enhancement Act of 1984
Chapter 7.5. Wildlife and Natural Areas Conservation Program
Chapter 8. Fisheries Restoration
Chapter 9. California Wildlife Protection Act of 1990
Chapter 10. Natural Community Conservation Planning Act
Chapter 10.5. Marine Life Protection Act
Chapter 11. Habitat Maintenance Districts
Chapter 13. Salton Sea Restoration Act

Division 6. Fish

...
 Part 2. Sport Fishing
 ...
 Chapter 2. Particular Varieties of Fish

...
Article 1.4. Trout Management

...
Article 8. Black Bass Conservation and Management

Division 11. Pacific Marine Fisheries Compact
 Division 12. Aquaculture
Division 12.5. Wildlife Violator Compact
 Division 13. State-Tribal Agreements Governing Indian Fishing
 Division 13.5. State-Tribal Agreements Governing Indian Fishing on the Klamath River

Commented [A13]: The proposal is to move this to Division 4.

Commented [A14R13]: Chapters 2 and 3 have nothing to do with hunting or trapping, they apply more broadly than to just "Birds and Mammals", and they do not belong in Division 4.

Chapter 3.5 is about aquatic invasive animals such as quagga mussels and invasive saltwater plants (caulerpa). The chapter includes conservation laws that have nothing to do with "Birds and Mammals", and they do not belong in Division 4.

Chapter 4 regulates the importation and transportation of all wildlife for all purposes, so it does not belong in Division 4.

Chapter 5 applies to both hunting and fishing guides. Since Division 4 only applies to "Birds and Mammals" it makes no sense to move this chapter there.

Chapter 6 contains two sections regarding the commercialization of wild rodents. It has nothing to do with hunting and does not belong in Division 4.

Chapter 6.5 authorizes DFW to assess civil penalties for certain violations. It applies more broadly than to just violations regarding birds, mammals, and even fish. It does not belong in Division 4.

Commented [A15]: Please see note above.

Commented [A16]: Please see note above.

C. **CLRC Basic Proposal + Option 1 + Option 2 (Consolidation of Provisions Related to Jurisdictional Cooperation)** **Yellow Highlighting Indicates Differencs From CLRC Basic Proposal + Option 1 (Consolidation of Proposed New Division 2.5 with Existing Division 3)**

Division 2. Department of Fish and Wildlife

Chapter 1. Organization and General Functions

Chapter 1.5. Wildlife Violator Compact

Chapter 2. Deputies, and Other Employees; County Wardens

Chapter 3. Other Powers and Duties

Chapter 4. Department-Managed Lands

Division 2.5 Wildlife and Habitat Conservation

Chapter 4. Chapter 1. Wildlife Conservation Law of 1947

Chapter 4.1. Chapter 2. California Riparian Habitat Conservation Program

Chapter 4.3. Chapter 3. Inland Wetlands Conservation Program

Chapter 4.4. Chapter 4. California Desert Conservation Program

Chapter 5. Fish and Game Management

Chapter 6. Fish and Wildlife Protection and Conservation

Chapter 6.5. Habitat Restoration and Enhancement Act

Chapter 6.6. Voluntary Stream Restoration Property Owner Liability

Chapter 7. Conservation of Aquatic Resources

Chapter 7.2. Trout Management

Chapter 7.3. Black Bass Conservation and Management

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Chapter 11. California Desert Native Plants

Chapter 12. Significant Natural Areas

Chapter 13. Nonvehicular Wildlife Crossings

Chapter 13.5. Wildlife Connectivity Actions

Division 3. Fish And Game Generally

Chapter 1. Taking and Possessing in General

Chapter 1.5. Endangered Species

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 Chapter 3. Importation and Transportation of Live Plants and Animals
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Chapter 13. Salton Sea Restoration Act

Division 6. Fish

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 Part 2. Sport Fishing
 ...
 Chapter 2. Particular Varieties of Fish

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Article 1.4. Trout Management

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Article 8. Black Bass Conservation and Management

Division 11. Interjurisdictional Cooperation

Part 1. Pacific Marine Fisheries Compact

Division 12. Aquaculture

Division 12.5 Part 2. Wildlife Violator Compact

Division 13 Part 3. State-Tribal Agreements

Chapter 1. State-Tribal Agreements Governing Indian Fishing

Division 13.5. Chapter 2. State-Tribal Agreements Governing Indian Fishing on the Klamath River

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Commented [A25]: Please see note above.

Commented [A26]: Please see note above.

Commented [A27]: Proposed to move to "Division 6. Fish." Moving "Division 12. Aquaculture" to fall within "Division 6. Fish": generally we do not use the word "fish" to describe aquaculture products.

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2004 and 2005 applies to both hunting and fishing and, more so, apply to amphibians and reptiles, so it does not make sense to move them to "Division 4. Birds and Mammals."

2006 and 2007 are general firearm provisions that are not limited to hunting. They apply to shooting a firearm for any purpose.

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