

Study R-100

July 14, 2022

Memorandum 2022-38

Fish and Game Law: Phase One Public Comment

In this study, the Commission¹ has been directed by the Legislature to recommend technical improvements to the Fish and Game Code, without making any significant substantive change to the law's effect.²

In December 2018 the Commission approved and distributed a tentative recommendation to recodify the existing Fish and Game Code in a proposed new Fish and Wildlife Code.³ The Commission received extensive public comment on the statutory revisions proposed in the tentative recommendation,⁴ and decided to divide further work on the study into two phases.

"Phase One" of the study would evaluate public comment on nonorganizational improvements, which would be implemented in existing law (rather than in a recodified code).⁵ Significant progress has been made in this phase of the study. We are now at the point of considering revisions that require further consultation with the Department of Fish and Wildlife ("DFW").

This memorandum presents several such proposed revisions.⁶

The staff recommends that the staff recommendations in this memorandum be approved on a consent basis, without individual oral presentation at the meeting. As always, before voting to approve the proposed consent items,

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. All received comments were submitted by the Fish and Game Commission and the Department of Fish and Wildlife.

5. See Memorandum 2021-11; Minutes (Feb. 2021), p. 5. "Phase Two" of the study, which has been discontinued, would have addressed organizational improvements. See Memorandum 2019-44, p. 10; Minutes (Sept. 2019), p. 4; Memorandum 2022-28, Minutes (May 2022), p. 3.

6. The original comments received on the proposed revisions discussed in this memorandum are reproduced in the attached Exhibit.

Commissioners and members of the public will have the opportunity to discuss any of the items proposed for consent approval.

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.

CHANGES THAT SHOULD PROVISIONALLY BE MADE

The proposed revisions below have been approved in principle by DFW. **The staff recommends that the Commission provisionally approve those changes for inclusion in a draft recommendation.**

That approval would be provisional because this is the first time that the proposed revisions have been shown as changes to existing code sections. It is possible that there might be concerns about how those revisions were implemented. The staff will circle back with DFW to see whether they have any such concerns.

Once the revisions are provisionally approved by the Commission and there are no objections from DFW, they will be added to the draft recommendation.

Proposed Section 3210 (Existing Section 1055.3)

Proposed Section 3210 in the tentative recommendation would have continued existing Section 1055.3, but deleted an obsolete cross-reference to a repealed code section.

As this deletion was explained in a Commission *Comment* following the proposed section rather than in a *Note*, the Commission did not receive any feedback on the deletion. However, the staff consulted with DFW counsel about the proposed correction and DFW agreed that it would be appropriate.

The staff recommends that the following proposed revision be included in the draft recommendation in this study:

§ 1055.3 (amended). Failure to appear is misdemeanor

1055.3. The department may authorize any person other than a commissioner or an officer or employee of the department to issue, as an agent of the department, annual wildlife area passes and native species stamps, and to sell promotional materials and nature study aids pursuant to, and subject to the requirements of, this article. An agent thus authorized may add a handling charge pursuant to ~~subdivisions (f), (g), and (h) of Section 1055~~ or subdivisions (d), (e), and (f) of Section 1055.1 to the fee prescribed in Article 3

(commencing with Section 1760) of Chapter 7.5 of Division 2 for each annual wildlife area pass or native species stamp issued.

Comment. Section 1055.3 is amended to delete an obsolete cross-reference to subdivisions of former Section 1055.

Proposed Section 4420 (Existing Section 12020)

Proposed Section 4420 would have continued existing Section 12020, a section specifying the consequence for violating a written promise to appear in court after an arrest. The Commission proposed revising that section to make clear that it only applies to a violation of fish and game law.

As this revision was also explained in a Commission *Comment* following the proposed section rather than in a *Note*, the Commission received no feedback on the proposed revision. However, after subsequent discussion with DFW counsel, DFW agreed that the proposed revision to the existing section would be nonsubstantive and appropriate.

The staff recommends that the following proposed revision be included in the draft recommendation in this study:

§ 12020 (amended). Failure to appear is misdemeanor

12020. Any person who is charged with a violation of this code or a regulation adopted pursuant to this code, who willfully ~~violating his~~ violates their written promise to appear in court, or before a person authorized to receive a deposit of bail, is guilty of a misdemeanor, regardless of the disposition of the charge upon which ~~he~~ the person was originally arrested.

Comment. Section 12020 is amended to clarify its application to violations of the Fish and Game Code or regulations adopted pursuant to that code.

The section is also amended to make it gender neutral.

Proposed Section 11510 (Existing Section 5507)

Proposed Section 11510 would have restated existing Section 5507 to clarify its text. A Commission Note following the proposed revision invited comment on whether the restatement would cause any substantive change in the meaning of the provision.

Both the Fish and Game Commission (“FGC”) and DFW responded that the restatement would not cause any substantive change. However, they did not affirmatively state that the change should be made. In subsequent discussion, DFW indicated affirmative support for the revision.

The staff recommends that the following proposed revision be included in the draft recommendation in this study:

§ 5507 (amended). Fish spear or gaff

5507. (a) It is unlawful for any person to possess, ~~except in his home, any~~ a fish spear or gaff within 300 feet of ~~any~~ a lake or stream in this ~~State~~ state, at ~~any~~ a time when spearing is prohibited in ~~such~~ that lake or stream.

(b) This section does not apply to ~~the possession~~ either of the following acts:

(1) Possession of a gaff carried as an accessory while angling.

(2) Possession of a fish spear or gaff in one's own home.

Comment. Section 5507 is amended for clarity.

Proposed Section 1990 (Existing Section 8614); Proposed Section 19910 (Existing Section 8615)

Proposed Sections 1990 and 19910 would have continued existing Sections 8614 and 8615, which address development and use of alternative fishing gear pursuant to an otherwise undescribed "experimental permit." Neither section cross-refers to any other statutory authority referencing such a permit, but in the tentative recommendation, the Commission surmised that it was an experimental permit that had been authorized in repealed Section 8606.

A Note following Section 19900 asked whether a new statutory cross-reference should be added to help identify the permit. Unfortunately, the Note was not as clear as it should have been, and neither entity offered comment on the issue.

In subsequent discussion with DFW counsel, DFW advised that Section 8614 and 8615 can now be repealed as obsolete. The experimental permit issue is now adequately addressed in another code section.⁷

The staff recommends that the provisions be repealed:

§ 8614 (repealed). Revocation or non-renewal of permit

~~8614. (a) If an experimental permit is revoked or not renewed, pursuant to a judgment, a decision of the commission, or a legislative enactment, and the permittee has an outstanding loan with the State Coastal Conservancy under Section 31125 of the Public Resources Code, as added by Chapter 910 of the Statutes of 1986, for the purchase of alternative fishing gear, the unpaid balance of the loan shall be excused from the date of revocation or nonrenewal of the permit, or from the date of any judgment, decision, or enactment which terminates the permit, if the permittee relinquishes the permit~~

7. See Section 1022.

~~and returns the collateral fishing gear to the department, in which case the department shall take possession of the alternative fishing gear for the State Coastal Conservancy. Any alternative gear received by the department due to a revocation, nonrenewal, or termination of an experimental permit may be resold by the State Coastal Conservancy at fair market value to other experimental permit applicants or holders under this article. If the permittee chooses to keep the alternative gear and repay the loan, the rate of interest shall be reduced to 3 percent for the remaining balance of the loan.~~

~~(b) If the Legislature approves the permanent use or type of gear and the commercial fishing permit or the license for the permanent use or type of gear is revoked for a violation of the terms and conditions under which the fishery is conducted, the permittee shall be responsible for any remaining balance on any outstanding loan with the State Coastal Conservancy for the purchase of alternative fishing gear.~~

Comment. Section 8614 is repealed as obsolete. See Section 1022.

§ 8615 (repealed). Request to terminate permit

~~8615. (a)(1) Within the first six months of operation pursuant to an experimental permit and after a reasonable and concerted effort to utilize a new type of commercial fishing gear, the permittee may request that the experimental permit be terminated if it is economically infeasible to harvest the target species or if the alternative gear is impractical, inefficient, or ineffective within the fishery or regional area selected. The permittee shall submit copies of all landing receipts, a financial statement setting forth the expenses and any revenue generated by the operation of the alternative fishing gear, and a brief summary from any observers, monitors, and employees regarding the operation of the alternative fishing gear to the department. The department shall review the permittee's submitted material.~~

~~(2) If the submitted material supports the claim that the new type of commercial fishing gear utilized by the permittee was either inefficient, impractical, or ineffective, or that it was not economically feasible for the permittee to harvest the target species, the department shall terminate the experimental permit and submit its findings to the State Coastal Conservancy. Upon receiving the department's report, the State Coastal Conservancy may terminate the permittee's loan. If the permittee returns the collateral fishing gear to the department, the State Coastal Conservancy shall reimburse the permittee from the loan fund for the principal amount of the loan repaid by the permittee. The department shall take possession of the fishing gear for the State Coastal Conservancy, which may resell the gear as set forth in subdivision (a) of Section 8614.~~

~~(3) If the information does not support the claim made by the permittee, the department may still terminate the experimental~~

~~permit. The State Coastal Conservancy may terminate the remaining balance on the loan if the permittee returns the collateral fishing gear to the department, but the State Coastal Conservancy shall not reimburse the permittee for previous loan payments.~~

~~(b) After six months of operation pursuant to an experimental permit, any request to terminate the permit for the reasons set forth in subdivision (a) shall include, in addition to the information required by paragraph (1) of subdivision (a), an explanation of the changed circumstances or reasons that cause the new type of gear to become inefficient, impractical, or ineffective or economically infeasible to harvest the target species after the initial six-month operating period. The department shall review the request and make its recommendation to the State Coastal Conservancy following the procedures set forth in subdivision (a). If the department terminates the experimental gear permit, the State Coastal Conservancy may terminate the remaining balance on the loan if the permittee returns the collateral fishing gear to the department, but it shall not reimburse the permittee for any loan payments received. The department shall take possession of the alternative fishing gear for the State Coastal Conservancy, which may resell the gear as set forth in subdivision (a) of Section 8614.~~

Comment. Section 8615 is repealed as obsolete. See Section 1022.

Proposed Section 38865(a) (Existing Section 2359)

Proposed Section 38865(a) would have restated existing Section 2359 to clarify its text. A Commission Note following the proposed revision invited comment on whether the restatement would cause any substantive change in the meaning of the provision.

Both entities responded that the restatement would not cause any substantive change, but neither affirmatively supported making the change. In subsequent discussion, DFW agreed that the change should be made.

The staff recommends that the following proposed revision be included in the draft recommendation in this study:

§ 2359 (amended). Striped bass

~~2359. Except as provided in Section 2363, no striped bass may be transported or carried out of or into this state, except striped bass taken from the Colorado River by sportfishing licensees to the extent and in the manner following only as follows:~~

~~(a) A resident of California, or the holder of a valid nonresident California sportfishing license, lawfully taking such fish on the waters striped bass from the Colorado River or from the Arizona shore of the that river, may transport or carry such fish the fish taken into California.~~

(b) A resident of Arizona, or the holder of a valid nonresident Arizona sportfishing license, lawfully taking ~~such fish on the waters~~ striped bass from the Colorado River or from the California shore of ~~the that river,~~ may transport or carry ~~such fish~~ the fish taken into Arizona.

Comment. Section 2359 is amended for clarity.

CHANGES THAT SHOULD NOT BE MADE

Following further input from one or both of the commenting entities, the staff recommends that the following revisions not be included in the draft recommendation.

Proposed Section 4862(c) (Existing Section 12002.2(c))

Proposed Section 4862(c) would have continued existing Section 12002.2(c), which permits the dismissal of a violation for sport fishing without a license, if the person charged shows a lifetime sport fishing license in court. The proposed section would have clarified that this dismissal is only an option if the lifetime license was valid at the time of the violation. A Commission Note asked for comment on that clarification.

In their initial response to the Note, both FGC and DFW expressed a belief that the proposed revision would not be problematic, but neither entity clearly supported making it.

After further discussion of the issue with DFW staff counsel, DFW urged that the revision not be made. It suggested that the provision might have been intended to allow a person to avoid a violation for fishing without a license by subsequently purchasing a lifetime license (effectively purchasing retroactive exoneration). If so, then the revision would be a substantive change.

The staff recommends that this revision not be made to the existing section at this time.

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

Proposed Section 4864 would have continued existing Section 12000(b)(2), which specifies the punishment for a violation of existing Section 6596.1(a).⁸ A Commission Note following the proposed section pointed out that the penalty provided for in the existing provision appeared to conflict with the penalty

8. Section 6596.1 prohibits fishing in specified ocean waters without specified ocean enhancement validations.

specified for the same violation in another existing section,⁹ and invited comment on how the conflict should be resolved.

In its initial response to the Note, both FGC and DFW agreed that a conflict existed, but neither offered a proposed resolution.

In further discussion with DFW staff counsel, DFW indicated that it would rather address the issue itself, outside of the Commission's proposal.

The staff recommends that no revision be made to the existing section at this time.

Proposed Sections 4975-4988 (Existing Sections 8630-8635, 9008)

A proposed article in the tentative recommendation would have made several existing sections presently governing the seizure of unlawfully used fishing nets¹⁰ expressly applicable to unlawfully used fishing traps. That change was consistent with language in existing Section 9008. A Commission Note invited comment on the appropriateness of the revision.

In its initial response to the Note, both FGC and DFW expressed general support for the revision. However, Commission staff later realized that the proposed revision might also affect the interpretation of several other code sections. The staff sought input on that possibility.

In further discussion of the issue with DFW staff counsel, DFW agreed that the proposed revision could cause a substantive change to existing law, and urged that the revision not be proposed in this study.

The staff recommends that this revision not be made to the existing sections at this time.

Proposed Section 5108 (Existing Section 12002.3)

Proposed Section 5108 would have revised existing Section 12002.3, which specifies the punishment for violating a section that prohibits the sale or purchase of fish or amphibians in certain circumstances.¹¹ As the punishment provided in Section 12002.3 refers only to violations involving "fish" and does not expressly refer to amphibians, a Commission Note invited comment on whether a reference to amphibians should be added to Section 12022.3.

9. See existing Section 12002.2.1(a)(1).

10. Existing Sections 8630-8635.

11. Section 7121.

In its initial response to the Note, FGC indicated that adding a reference to amphibians would not cause a problem, but that the lack of such a reference was not problematic in practice. DFW agreed with both of FGC's comments, but asserted that the reference to amphibians was not needed because the code's definition of the term "fish" expressly includes amphibians.¹²

In further discussion with DFW counsel, DFW opposed adding amphibians to the section.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 13405(b) (Existing Section 7185)

Proposed Section 13405(b) would have continued existing Section 7185, a section in a statutory article that addresses sport fishing entitlements for use in the Colorado River between California and Arizona. Section 7185 provides that the article shall remain effective only so long as the Fish and Game Commission finds there to be reciprocity between the two states as to these entitlements.

In response to a Note in the tentative recommendation, DFW suggested there might be grounds for repeal of Section 7185, based on the lack of the required reciprocity. FGC did not comment on the Note.

In further discussion with DFW staff counsel, DFW indicated it had concluded that repeal of the existing section would not be appropriate at this time.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 15060 (Existing Section 7892)

Proposed Section 15060 would have continued the third sentence of existing Section 7892, specifying the fee for a commercial aircraft registration. A Commission Note pointed out that, unlike many other license fee provisions in the existing code, Section 7892 does not expressly provide for annual adjustment of the specified fee pursuant to a price adjustment provision in the code.¹³ The Note then inquired whether the adjustment provision was nevertheless understood to apply to this section.

In its initial response to the Note, both FGC and DFW expressed the belief that the adjustment provision was understood to apply to the fee specified in Section

12. See Section 45.

13. See Section 713.

7892. However, neither commented on whether that application should be made explicit in the text of the section.

In further discussion with DFW staff counsel, DFW expressed that despite its understanding about the applicability of the adjustment provision, a revision making that application explicit might still be viewed as a substantive change, and urged that the issue not be addressed in this study.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 26235 (Existing Section 3305)

Proposed Section 26235 would have restated existing Section 3305 to improve its clarity. A Commission Note invited comment on whether the proposed clarification would cause any substantive change in the meaning of the existing section.

In response to the Note, FGC advised it did not believe the restatement would substantively change the meaning of the section. DFW expressed a belief that at least one aspect of the restatement would cause a substantive change.

In further discussion with DFW staff counsel, DFW also reported that it was not aware of any confusion relating to the intended meaning of the section, and there was therefore also no need for revision of the section.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 26275 (Existing Section 3311)

Proposed Section 26275 would have continued existing Section 3311, which contains what the Commission thought might be an ambiguous reference to a “licensee.” A Commission Note invited comment on whether the proposed section should clarify the intended meaning of the word “licensee” as used in the section.

In response to the Note, FGC agreed that the term as used in the section was ambiguous, but did not affirmatively support the Commission’s proposed clarification. DFW did not take a position on how or whether the term should be clarified, but offered its understanding of the intended meaning of the term as used in the section.

In further discussion with DFW staff counsel, DFW indicated that it was not aware of any confusion relating to the section’s meaning. DFW urged that no change be made to the section.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 31610 (Existing Section 4190)

Proposed Section 31610 would have continued existing Section 4190 without substantive change. However, two Commission Notes following the section inquired whether the term “large depredatory mammal” as used in the section might be more precisely defined.

In response to the Note, FGC agreed that the term “large” as used in the section was ambiguous, and offered what it understood to be the meaning of “depredatory mammal.” DFW agreed with both FGC comments, but further indicated that it has not had difficulty administering the existing section, and did not believe any revision was needed.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 33450 (Existing Section 4759)

Proposed Section 33450 would have restated existing Section 4759, which allows a hunter who has taken a bear to donate parts of the bear to a veteran organization. A Commission Note following the section inquired whether the restatement would cause any substantive change to the existing section.

In response to the Note, FGC agreed that a sentence in the existing section was ambiguous, but as a result of the ambiguity was unable to say whether the proposed restatement would substantively change the meaning of the section. DFW advised that as it read the existing section, the restatement would cause a substantive change.

After discussion with DFW staff counsel, DFW opposed the restatement because it would cause a substantive change.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 34865 (Existing Section 3953(b))

Proposed Section 34865 would have continued part of the first sentence of existing Section 3953(b), which relates to the sale of elk tags. A Commission Note inquired whether that part of the sentence could be deleted as redundant, as it appeared to be substantially duplicated in two other existing sections.

FGC did not respond to the Note. DFW did not immediately see any redundancy based on the phrasing of the Note.

After discussion with DFW staff counsel, DFW agreed there was some redundancy, but urged that the redundancy was helpful in practice.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 40380 (Existing Sections 8552.2, 8552.8); Proposed Section 40395 (Existing Section 8552.4); Proposed Section 40420 (Existing Section 8557)

Each of the proposed sections identified above would have continued existing sections relating to commercial herring fishing. Commission Notes following each proposed section inquired about how to resolve ambiguities in those sections.

Neither entity addressed the ambiguities, as both asserted that the existing sections had been rendered inoperative by the Fish and Game Commission's adoption of a fishery management plan in 2020.¹⁴ FGC suggested that the existing sections be repealed.

Because fishery management plans can change, the staff does not recommend repealing the sections at issue.

In light of the existence of a fishery management plan that governs herring, the staff recommends no revision of the existing sections at this time.

Proposed Section 47070 (Existing Section 8278)

Proposed Section 47070 would have continued existing Section 8278. A Commission Note following the section inquired about a possible ambiguity relating to the crabs that are subject to the existing section.

FGC believed the section could be clarified. DFW offered no comment on whether clarification was appropriate.

In discussion with DFW staff counsel, DFW opposes the proposed clarification as unnecessary.

The staff recommends that no revision be made to this existing section at this time.

14. See Section 7071(b).

Proposed Section 47150 (Existing Section 8276.3)

Proposed Section 47150 would have continued existing Section 8276.3. A Commission Note following the section inquired about what appeared to be a nonstandard usage of a conjunction in the text of the section.

FGC did not respond to the Note. DFW's response did not appear to directly address the inquiry in the Note.

However, in discussion with DFW staff counsel, DFW explained that the usage was intentional and correct, based on how the section was intended to be understood.

The staff recommends that no revision be made to this existing section at this time.

Proposed Section 47450(a) (Existing Sections 8284(a) and 9011(a)(1)); Proposed Section 47460(b) (Existing Section 9011(a)(3))

The proposed sections identified above would have continued the existing sections identified above without any substantive change.

The existing sections all provide that their application is subject to provisions in one or more specified articles. Commission Notes following the proposed sections asked whether the references to those articles should be expanded to include other provisions that also appeared to be relevant.

FGC did not respond to the Note. DFW identified even more provisions that should perhaps be referenced in the existing sections.

However, after discussion with DFW staff counsel, DFW opposed making any expansion to the existing references. It concluded that doing so might cause a substantive change in existing law.

The staff recommends that no revision be made to the existing sections at this time.

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 2022-38.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
3210	1055.3	no comment	no comment
4420	12020	no comment	no comment
4862	12002.2(c)	FGC believes the proposed addition appears consistent with legislative intent given the legislative addition of "and valid at the time of the person's arrest" to (b) by Stats. 1989, Chap. 826 (prior to the addition of (c)).	DFW believes the restatement of sec. 12002.2(c) is not problematic because it would clarify that production of a lifetime sport fishing license valid at the time of the violation would allow the charge to be dismissed.
4864	12000(b)(2)	CLRC note (1): no comment. CLRC note (2): FGC believes there is a conflict, but is not proposing a resolution; it is unclear which penalty the legislature intends to apply to violations of sec. 6596.1.	Two comments: 1) Informational only. no comment. 2) CDFW agrees that there is a conflict but is not commenting on a resolution of this conflict because it is unclear which penalty the legislature intends to apply to violations of sec. 6596.1.
4975	8631	FGC believes that the proposed approach is appropriate as the provisions in Chapter 3, Article 3 apply to the seizure of both nets and traps; therefore, sec. 8631 can be amended to state both nets and traps may be tagged.	The Note actually pertains to Article 3 commencing with sec. 4975. CDFW agrees that these provisions should apply to the seizure of nets and traps.
4980	8632	FGC agrees with CLRC that existing statute is not clear about who would notify DFW that a vessel carrying a seized net has arrived in port. (See comment to existing Section 4975)	CDFW agrees that the existing statute does not describe who would notify the department that a vessel carrying a seized net has arrived in port. CDFW is uncertain who the legislature intended to make such notification. (See comment to existing Section 4975)
4982	8633	(See comment to existing Section 4975)	(See comment to existing Section 4975)
4984	8635	(See comment to existing Section 4975)	(See comment to existing Section 4975)
4986	8630	(See comment to existing Section 4975)	(See comment to existing Section 4975)
4988	8634	(See comment to existing Section 4975)	(See comment to existing Section 4975)

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
5108	12002.3	FGC believes the proposed revision is not problematic nor is the potential ambiguity identified in the CLRC note problematic in practice.	Two comments: (1) The proposed revision to sec. 12002.3 is not problematic, but CDFW notes that the definition of "fish" (Section 45) already includes amphibians, so it is unnecessary to also list amphibians. (2) The ambiguity described in this Note has not created a problem in practice.
11510	5507	FGC believes that the proposed restatement of sec. 5507 would not cause a substantive change in the meaning of that section.	The restatement does not cause a substantive change in the meaning of the section.
13405(b)	7185	no comment	Should CLRC address the 2013 AZ-CA Compact, sec. 7185 can be repealed. Obsolete.
15060	7892, 3 rd sent	FGC believes that the commercial aircraft registration fee is subject to adjustment by the method described in sec. 713 (pursuant to sec. 1050).	Sec. 7892 is understood to be subject to the adjustment described in sec. 713.
19900, 19910	8614, 8615	FGC believes that CLRC's effort to comport the proposed sec. 19900(a) with changes to existing sec. 8614 is outside the scope of the current review.	CDFW believes CLRC's Note is erroneous: existing sec. 8614 does not reference sec. 8606.
25130	1122.5	no comment	CDFW believes there would be no substantive change in the meaning of the section.
26235	3305	FGC believes the restatement does not cause any substantive change in the meaning of the provisions.	CDFW disagrees with the change in sec. 3305 to make it apply to "a person licensed by" and "licensees". The prohibitions applies to everyone and this would cause a significant substantive change in the meaning of the section that is not beneficial. Other than this change, CDFW believes that the rest of the restatement does not cause a substantive change in the meaning of the provision.
26275	3311	FGC agrees that the use of "licensee" in sec. 3311 is ambiguous in determining to which license it applies. However, changing the language from "licensee" to "a person" expands the the scope of the section and it is not clear such expansion is beneficial.	CDFW believes that changing the language in sec. 3311 from "licensees" to "persons" is a substantive change to the code that expands the scope of that section and is not clearly beneficial. The license referred to in sec. 3311 is the Licensed Domesticated Migratory Game Bird Shooting Area Permit required by sec. 3300 although that section refers to it as a license not a permit.
31610	4190	CLRC note (1): FGC believes that the term "large" is ambiguous in sec. 4190. CLRC note (2): FGC notes that "depredatory mammal" is not defined in statute or regulation. FGC believes common usage means a mammal causing damage or destruction.	Two comments: (1) CDFW believes that the term "large" is ambiguous as used in sec. 4190 but has not had difficulty administering this section. (2) "Depredatory mammal" is not a term defined in statute or regulation. In common usage, it would mean a mammal that is causing damage or destruction.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
33450	4759	FGC believes that the last sentence of sec. 4759 is ambiguous with regard to whether a receipt must be retained after the period stipulated by sec. 4755; therefore, it is not clear whether the the proposed restatement causes a significant substantive change.	CDFW believes that the restatement of the last sentence of sec. 4759 causes a significant substantive change in the section that is not beneficial because existing law requires obtaining and retaining a receipt. The restatement makes that requirement conditional depending on when the donation occurs.
38865(a)	2359	FGC believes that the proposed restatement of sec. 2359 does not change its substantive effect. Combining Fish and Game Code sections (2359 and that portion of 2363 related to striped bass) is outside the scope of the current review.	CDFW believes the proposed restatement of sec. 2359 would not cause any substantive change to that section. The proposal to combine secs. 2359 and 2363(b), as they relate to striped bass is beyond the scope of CDFW's review at this time.
40380	8552(a), 8552,2	FGC believes that inoperative sections should be repealed. Sec 8552 became inoperative upon FGC's adoption of the California Pacific Herring Fishery Management Plan and implementing regulations, which were effective March 1, 2020.	Secs. 8552 and 8552.2 have become inoperative due to the adoption of the California Pacific Herring Fishery Management Plan and implementing regulations by the Fish and Game Commission. As a result, CDFW is not commenting on this Note.
40395	8552.4	FGC believes that inoperative sections should be repealed. Sec 8552.4 became inoperative upon FGC's adoption of the California Pacific Herring Fishery Management Plan and implementing regulations, which were effective March 1, 2020.	Sec. 8552.4 has become inoperative due to the adoption of the California Pacific Herring Fishery Management Plan and implementing regulations by the Fish and Game Commission. As a result, CDFW is not commenting on this Note.
40420	8557	FGC believes that inoperative sections should be repealed. Sec 8557 became inoperative upon FGC's adoption of the California Pacific Herring Fishery Management Plan and implementing regulations, which were effective March 1, 2020.	Sec. 8557 has become inoperative due to the adoption of the California Pacific Herring Fishery Management Plan and implementing regulations by the Fish and Game Commission. As a result, CDFW is not commenting on this Note.
47070	8278	FGC believes it is unlawful to take any female Dungeness crab, so to apply that restriction in the form of a measurement as it appears in the proposed restatement of sec. 8278 is an indirect way of stating the unlawful activity. FGC believes greater clarity would be achieved by separating the concepts into different subsections (a, b, c), including a direct statement that it is unlawful to take female Dungeness crabs.	It is always unlawful to take female Dungeness crab. The exception in sec. 8278 is intended to apply only to male Dungeness crab of the specific breadth.
47150	8276.3	no comment	Two comments: (1) The quality control program operates on a management-area level in conjunction with the states of Oregon and Washington, not a district level. These districts would all be closed and opened simultaneously for a quality delay. (2) The Note is informational only. no comment.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
47450(a)	8284(a)	Reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW agrees that sec. 8284(a) should also be made subject to secs. 8834 and 8834.5.
47460(b)	9011(a) (3)	no comment	CDFW is not commenting on CLRC's recodification of the code at this time. That said, sec. 9011(a)(3) can be made subject to secs. 8834, 8834.5, 9012 and the other provisions of sec. 9011.