

Memorandum 2022-46

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 effect of that law.²

In response to that directive, in December 2018 the Commission distributed a tentative recommendation that would have recodified 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 from both the Fish and Game Commission (“FGC”) and the Department of Fish and Wildlife (“DFW”).⁴

Thereafter, the Commission decided that further work on the study should incorporate the received public comment in proposed amendments of the existing code, rather than in the creation of a new recodified code.⁵ The Commission also decided to develop these proposed amendments based on a methodology involving continuing collaboration with the commenting agencies.⁶

Significant progress continues to be made in the study, with proposed amendments of more than 100 existing code sections having received final approval for inclusion in a recommendation to the Legislature. Looking forward, there remain approximately 75 additional proposed amendments that have received provisional approval from the Commission, and are awaiting final

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. The initial public comment from those entities received on the revisions proposed in this memorandum is reproduced in the attached Exhibit.

5. See Memorandum 2021-11; Minutes (Feb. 2021), p. 5; Memorandum 2022-28; Minutes (May 2022), p. 3.

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

approval by commenters. In addition, there remain approximately 30 revisions proposed in the Commission's tentative recommendation awaiting an agreement from commenters that the revision would be an appropriate amendment of an existing code section, and approximately 20 revisions proposed in the tentative recommendation that still require discussion with commenters.

It is the staff's hope and expectation that all proposed revisions presented in the tentative recommendation that remain under consideration as proposed statutory amendments will be ready for final approval by the Commission, or withdrawn as proposals, in time for the submission of a final recommendation to the Legislature by the end of this calendar year.

This memorandum presents a handful of additional proposed revisions now ready for Commission evaluation. **Consistent with past practice in this study, at the upcoming meeting the staff will seek approval of all staff recommendations in this memorandum on an aggregate basis, without oral presentation of any individual recommendation.** As always however, before the staff seeks that approval, questions or comments on any staff recommendation will be welcome.

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.

PROPOSED AMENDMENTS FOR WHICH FINAL APPROVAL IS APPROPRIATE

The amendments to the existing code section proposed below have now been expressly approved by DFW, and were not previously objected to by FGC.

The staff recommends that the Commission approve the proposed amendments of the section below for inclusion in a draft recommendation in this study.

Proposed Section 42100 (Existing Section 7925)

§ 7925 (amended). Take from commercial passenger fishing boat

7925. (a) If a vessel is licensed under this article and commercial passenger fishing boat is used to take salmon or has salmon aboard in ocean waters north of Point Arguello, there shall be on board that vessel, a total number of commercial fishing salmon stamps sufficient to have at least one for the operator and one for each crewmember required by United States Coast Guard regulations, excepting an operator or a crewmember who is exempt from the commercial fishing salmon stamp requirement ~~under subdivision~~

~~(b)~~ of Section 7860. The commercial fishing salmon stamps shall be affixed to either the commercial fishing licenses of the operator and the crewmembers or, pursuant to subdivision (b), to the vessel's commercial passenger fishing boat license. No person shall operate, or cause to be operated, ~~any vessel licensed under this article a commercial passenger fishing boat~~ in violation of this subdivision. Vessels permitted as commercial salmon fishing vessels pursuant to ~~Section 8234~~ Article 4.5 (commencing with Section 8230) of Chapter 2 are exempt from the requirements of this subdivision.

(b) Notwithstanding Section ~~1053~~ 1053.1, the department may issue to the owner or operator of a vessel licensed pursuant to this article, upon application and payment of the fees prescribed in subdivision (c) of Section 7860, one commercial fishing salmon stamp for the operator and not more than one additional commercial salmon stamp for each crewmember required by the United States Coast Guard regulations. The commercial fishing salmon stamps issued under this subdivision shall be affixed to the vessel's commercial passenger fishing boat license issued pursuant to this article.

Comment. Subdivision (a) of Section 7925 is amended to more clearly identify statutory permitting authority cross-referenced in the subdivision.

Subdivision (b) is amended to update an obsolete cross-reference. The section is also otherwise amended for clarity.

REVISIONS FOR WHICH PROVISIONAL APPROVAL IS APPROPRIATE

The revisions proposed below were previously presented in the tentative recommendation in this study in proposed new code sections, and were not expressly objected to by either commenting entity. The revisions have now been approved in principle by DFW for incorporation in a statutory amendment of an existing code section.

The staff recommends that the Commission provisionally approve these revisions as proposed amendments to existing code sections, pending final approval by DFW of the revisions in the form set forth below.

Proposed Section 25130 (Existing Section 1122.5); Proposed Section 41005 (Existing Section 5514); Proposed Section 43265 (Existing Section 10002)

§ 1122.5 (amended). Mount Whitney Fish Hatchery

1122.5. (a) Notwithstanding any other provision of law, the Director of General Services, with the consent of the department, may lease to the Friends of the Mount Whitney Hatchery, at no cost, and subject to any other terms and conditions that the director deems appropriate, for a term not to exceed 25 years, and with the

possibility of renewal, the Mount Whitney Fish Hatchery ~~facilities,~~ or any ~~portion thereof~~ part of the hatchery, situated in the County of Inyo. ~~The leased portion of the building~~

(b) Any part of the hatchery that is leased pursuant to subdivision (a) shall be used for environmental education purposes and other related activities designed to benefit the hatchery and the community.

(c) The lease shall require the Friends of the Mount Whitney Fish Hatchery to permit reasonable public access to the ~~facility~~ hatchery, to obtain and maintain liability insurance for the leased portion of the ~~facility~~ hatchery, and to maintain the leased portion of the ~~facility~~ hatchery at all times. The lease shall provide that any work done on the ~~facility~~ hatchery shall be performed in consultation with the State Office of Historic Preservation. The lease shall also provide that the state, agents of the state, the department, and agents of the department shall be held harmless from, and indemnified against, any liability resulting from the acts or omissions of the Friends of the Mount Whitney Fish Hatchery ~~performed in the course of the lease agreement~~ arising out of performance of the lease.

Comment. Section 1122.5 is amended for clarity, and to add subdivision designations.

§ 5514 (amended). Hook other than in mouth

5514. (a) It is unlawful, ~~in inland waters,~~ to kill or retain in possession any chinook salmon, coho salmon, ~~or~~ kokanee salmon, or any steelhead that has not taken the bait or lure in its mouth, ~~in inland waters.~~

(b) Any chinook salmon, coho salmon, ~~or~~ kokanee salmon, or any steelhead that is hooked in inland waters other than in its mouth ~~in inland waters~~ shall be released unharmed.

Comment. Section 5514 is amended for clarity.

§ 10002 (amended). Required documentation

10002. Every person licensed pursuant to this division shall make a true and legible record of each transaction involving the eggs of sturgeon. This documentation shall show all of the following:

(a) The weight of the eggs received by the licensee.

(b) The date the eggs were received by the licensee.

(c) The name and address of the person from whom the licensee received the eggs were received, and, if different, ~~the.~~

(d) If any of the sturgeon that produced the eggs were artificially propagated by a person other than the person named pursuant to subdivision (c), the name and address of the person who artificially propagated the sturgeon ~~from which the eggs were obtained or the.~~

(e) If the person named pursuant to subdivision (c) received any of the sturgeon that produced the eggs from another person, the name and address of ~~the~~ that person from whom the sturgeon were received from which the eggs were obtained.

~~(c) The date of receipt.~~

~~(d) (f) If any of the sturgeon that produced the eggs were imported into this state, the place where the those sturgeon were taken.~~

~~(e) (g) Whether the eggs are to be processed by the recipient licensee or sold by him or her to another person for processing, and. In addition, if the eggs are to be sold to another person for processing by another, the name and address of that person.~~

~~(f) (h) Such Any other information as that the department may require and specify as required on the any form provided.~~

Comment. Section 10002 is amended for clarity.

Proposed Section 34530(a)-(d) (Existing Section 460)

Proposed Section 34530(a)-(d) would have restated existing Section 460 to clarify its text. A Commission Note following the proposed section inquired whether the restatement would cause any substantive change to the meaning of the existing section.

FGC did not respond to the Note, but DFW pointed out that the restatement would substantively change the section's meaning, because the restatement had inadvertently deleted a sentence from the existing section.

In subsequent discussion, DFW counsel agreed that if the inadvertent deletion was corrected, as it has been below, the revision of the existing section proposed in the tentative recommendation would be appropriate.

§ 460 (amended). Department recommendations relating to deer hunting

460. (a) Prior to each meeting of the commission at which the commission considers the regulation of deer and takes action pursuant to paragraph (1) of subdivision (a) of Section 255, the department shall recommend to the commission ~~those the~~ deer herd units to be placed under a general deer hunting season.

(b) At the same time, the department shall ~~recommend~~ do all of the following:

(1) Recommend to the commission, subject to the provisions of Sections 458 and 459, whether any antlerless deer should be taken, and ~~in what if so, in which~~ deer herd management units ~~antlerless deer are to be taken.~~

(2) If in the judgment of the department there are deer herd management units in which hunting pressure would adversely affect the deer herd, impair the hunting experience, or endanger the public safety, ~~the department shall also~~ recommend to the commission those deer herd management units where hunter numbers should be restricted, and those which should be removed from the general deer hunting season designation. ~~The~~

~~(3) Inform department shall inform the commission of the condition of each deer herd management unit. Upon receipt of the recommendations and information required in this section, the commission shall make that material known to the public and its determinations regarding proposed regulations. The recommendations of the department shall~~

~~(4) Recommend to the commission, in accordance with the provisions of Sections 458 and 459, include the number, if any, of antlerless deer that should be taken in deer herd management units, whether the permits should be either-sex permits, the proposed dates for the taking, and the number of permits proposed for each deer herd management unit. At the same time, the department shall recommend~~

~~(5) Recommend to the commission the establishment of any hunter-restricted quota units, if needed, and the number of the quota and manner in which the quota permits should be issued.~~

~~(c) Upon receipt of the recommendations and information required by this section, the commission shall make that material known to the public, and shall also make known to the public the commission's determinations regarding proposed regulations.~~

Comment. Section 460 is amended for clarity.

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 on sections addressed in Memorandum 2022-46.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
25130	1122.5	no comment	CDFW believes there would be no substantive change in the meaning of the section.
34530	460	no comment	CDFW believes that the restatement causes a significant substantive change in the section that is not beneficial and could be controversial because it deletes the requirement in the sixth sentence in sec. 460 that CDFW make recommendations about antlerless deer hunts.
41005	5514	FGC believes that the proposed restatement of sec. 5514 does not cause a substantive change in the meaning of that section. FGC has no comment about dividing sec. 5514 into two sections based on the species as reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW believes that the restatement of sec. 5514 does not cause a substantive change in the meaning of that section, except it has no comment at this time about dividing this section up based on the species of fish. CDFW believes that the phrase "In inland waters" could be moved to the beginning of (a) and (b) to be more clear.
42100	7925	CLRC note (1): FGC has no comment. CLRC note (2): FGC agrees with CLRC regarding changing the cross-reference to sec. 1053.1. FGC notes the addition of a comma after the word "aboard" in the first sentence of subdivision (a) (see line 32); FGC believes adding the comma potentially changes the meaning of the sentence, or at least makes it unclear.	Two comments. (1) The proposed restatement of sec. 7925 generally does not change its intended meaning, although CDFW believes that the addition of the comma on line 32 in proposed sec. 42100 after "aboard" may change the meaning of sec. 7925. At a minimum the addition of the comma is unnecessary. (2) The reference in sec. 7149.05(a)(4) to sec. 1053 should be changed to sec. 1053.1 since sec. 1053 was repealed and sec. 1053.1 is substantially similar to former sec. 1053.
43265	10002	no comment	The restatement of sec. 10002(b) would not cause any substantive change in the provision's meaning.