

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

**Fish and Game Law:
Technical Revisions and Minor
Substantive Improvements (Part 2)**

October 2015

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 2)*, 44 Cal. L. Revision Comm'n Reports 349 (2015).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

c/o King Hall Law School
Davis, CA 95616

TARAS KIHICZAK, Chairperson
CRYSTAL MILLER-O'BRIEN, Vice-Chairperson
DIANE F. BOYER-VINE
DAMIAN CAPOZZOLA
ASSEMBLY MEMBER ED CHAU
VICTOR KING
SUSAN DUNCAN LEE
SENATOR RICHARD ROTH

October 8, 2015

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The Law Revision Commission is preparing draft legislation to recodify the Fish and Game Code, in order to improve its organization and clarity, remove obsolete or redundant material, and correct technical errors. Because that work will involve the reorganization of the entire code, the recodification legislation will not be ready for presentation to the Legislature until the study is completed.

However, some beneficial changes can be made more quickly. As the larger study proceeds, the Law Revision Commission will make note of technical corrections and minor substantive improvements that can be made to the existing code, without waiting for completion of the entire study. Such improvements will be periodically compiled into recommendations for submission to the Legislature.

This recommendation is the second such proposal. It proposes a largely nonsubstantive modernization and reorganization of provisions of the Fish and Game Code relating to the regulatory authority of the Fish and Game Commission.

This recommendation was prepared pursuant to Resolution Chapter 63 of the Statutes of 2014.

Respectfully submitted,

Taras Kihiczak
Chairperson

FISH AND GAME LAW: TECHNICAL REVISIONS AND MINOR SUBSTANTIVE IMPROVEMENTS (PART 2)

BACKGROUND

In 2010, the Legislature directed the Natural Resources Agency to develop and submit a “strategic vision” for the Fish and Game Commission and what is now the Department of Fish and Wildlife.¹

Among other things, the Strategic Vision report recommended that the Law Revision Commission review and recommend “clean-up” of the Fish and Game Code, to “(1) resolve inconsistencies; (2) eliminate redundancies; (3) eliminate unused and outdated code sections; (4) consolidate sections creating parallel systems and processes; and (5) restructure codes to group similar statutes....”²

Based on a draft of the Strategic Vision report, Senator Fran Pavley and Assembly Member Jared Huffman (then Chairs of the Senate Natural Resources and Water Committee and the Assembly Water, Parks, and Wildlife Committee) requested that the Law Revision Commission conduct a comprehensive review of the Fish and Game Code, and recommend changes to the Legislature that would “update, clarify, and improve” the code.³

Authority to conduct such a study was enacted by concurrent resolution in 2012:

[The] Legislature approves for study by the California Law Revision Commission the new topic listed below:

....

1. 2010 Cal. Stat. ch. 424 (AB 2376 (Huffman)).

2. *California Fish & Wildlife Strategic Vision, Recommendations for Enhancing the State’s Fish and Wildlife Management Agencies* (April 2012), p. A13, Law Revision Commission Staff Memorandum 2012–41, Exhibit p. 45.

3. Law Revision Commission Staff Memorandum 2012-5, Exhibit pp. 32-33.

Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law[.]⁴

Pursuant to that authority, the Law Revision Commission is analyzing the entire Fish and Game Code for the purpose of preparing recodification legislation that would improve the code's organization and clarity, remove obsolete or redundant material, and correct technical errors. Because that work will involve the reorganization of the entire code, the recodification legislation will not be ready for presentation to the Legislature until the study is completed.

However, some beneficial changes can be made more quickly. As the larger study proceeds, the Law Revision Commission has made note of minor substantive improvements that can be made to the existing code without waiting for completion of the entire study. Such improvements will be periodically compiled into recommendations for submission to the Legislature.

The Law Revision Commission's first such recommendation⁵ has been submitted to the Legislature, and a bill that would implement the recommendation is presently pending.⁶ This recommendation is the Law Revision Commission's second such proposal.

The revisions proposed in the recommendation are summarized below.⁷

4. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).

5. *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part I)*, 45 Cal. L. Revision Comm'n Reports 1 (2015).

6. See AB 1527 (Committee on Water, Parks, and Wildlife).

7. Some of the provisions in the proposed legislation could be affected by pending legislation. See, e.g., AB 665 (Frazier), SB 798 (Committee on Natural Resources and Water).

REGULATION OF TAKE AND POSSESSION

One of the central functions of the Fish and Game Commission (hereafter, “Commission”) is to adopt regulations governing the take and possession of wild animals. General authority to adopt such regulations is granted in Fish and Game Code Section 200, subject to certain express limitations.⁸

The article that contains Section 200 (hereafter, “Article 1”) also contains a number of provisions that prescribe procedures for Commission rulemaking.⁹

Article 1 and most of the sections within it were enacted in 1957, as part of the last recodification of the Fish and Game Code.¹⁰ Since that time, there have been significant changes in the law, which Article 1 has not been revised to properly reflect. Those changes include:

- (1) The enactment of new provisions that authorize Commission regulation of take or possession in specific circumstances.
- (2) Abandonment of the original procedure prescribed in Article 1 for Commission rulemaking.
- (3) Enactment of the modern Administrative Procedure Act (“APA”),¹¹ which provides a uniform and

8. See Fish & Game Code §§ 200 (commercial fishing), 201 (natural resources), 204(d) (spike bucks and spotted fawns).

9. See Fish & Game Code §§ 202 (exemptions from time periods in Administrative Procedure Act provisions), 206, 207, and 220(b) (meeting procedure), 210 and 211 (distribution of regulations), 215 (effective date of regulations), 218 (judicial review), 219 (effect on other code sections) 220(a) (effective time period of regulation).

10. 1957 Cal. Stat. ch. 456.

11. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As a state agency, the Fish and Game Commission is required to comply with all applicable procedural provisions of the APA when promulgating regulations, unless expressly exempted by legislation enacted after 1947. Gov’t Code § 11346; see also *Voss v. Superior*

comprehensive procedure for state agency rulemaking.

This recommendation proposes to modernize Article 1 and related law, by conforming procedural rules to current practices, and by eliminating obsolete language and distinctions.

Generalized Application of Rulemaking Procedure

When Article 1 was first enacted in 1957, Section 200 provided nearly all of the authority for Commission regulation of take and possession. In accord with that fact, the procedural rules in Article 1 were largely drafted to apply to rulemaking “pursuant to this article” — i.e., pursuant to the article that contained Section 200. Consequently, the rulemaking procedures in Article 1 applied to every regulation adopted by the Commission under its general authority to regulate take and possession.

Since 1957, the Legislature has enacted a number of new code sections that authorize the Commission to regulate the take or possession of specific animals, or in specified circumstances. Those provisions have been located in the Fish and Game Code near the subjects to which they relate, and not in Article 1. For example, in 1986 the Legislature enacted Fish and Game Code Section 4902, authorizing the Commission to regulate Nelson Bighorn Sheep.¹² That provision is located in the Fish and Game Code among other provisions governing specific mammals, rather than in Article 1.

This placement of new rulemaking authority outside of Article 1 creates potential for confusion.

By their terms, the procedural provisions of Article 1 apply to rulemaking “pursuant to this article,” i.e., pursuant to the general authority conferred by Section 200. So, when the Commission regulates Nelson Bighorn Sheep pursuant to Section 4902, is it

Court, 46 Cal. App. 4th 900, 909, 54 Cal. Rptr. 2d 225 (1996). However, the APA specifies only a “floor” of regulatory procedure, and agencies may be subjected to additional regulatory responsibilities as the Legislature provides.

12. See, e.g., Fish & Game Code § 4902(a).

subject to the procedural provisions in Article 1? A literal reading of the Article 1 provisions would suggest that it is not.

But Nelson Bighorn Sheep are mammals. As such, one could also argue that a regulation of Nelson Bighorn Sheep is concurrently authorized by Section 200. In that case, the regulation would be subject to the procedures in Article 1.

The Law Revision Commission sees no policy reason to distinguish between the regulation of wild animals generally, and the regulation of those same animals specifically, with regard to the rulemaking procedures provided in Article 1. To the contrary, it seems likely that the Legislature intended for the procedures in Article 1 to apply to nearly every Commission regulation of take or possession (as was the case when those procedural provisions were enacted). The later decisions to locate more specific grants of regulatory authority (like Section 4902) according to subject matter were likely driven only by organizational concerns, rather than an intention to exclude those grants of authority from general rulemaking procedures.

The proposed legislation would therefore generalize the rulemaking procedures in Article 1 so that they would apply to all Commission regulations governing take or possession of wild animals, with one exception.¹³ The procedures would not apply to matters that are expressly excluded from the general rulemaking authority provided in Section 200.¹⁴ Those exclusions were enacted together with the rulemaking procedures, creating a strong inference that the Legislature intended to exclude those matters from the procedures that governed rulemaking under Section 200. Out of caution, the proposed legislation would not disturb that inference.

13. See proposed Fish & Game Code § 250 *infra*.

14. See *supra* note 8.

Modernization of Procedure for Conducting Rulemaking at Public Meetings

As originally enacted, Article 1 required the Commission to conduct its rulemaking according to a fixed calendar. At its January and February meetings, it was to adopt regulations governing fish, amphibians, and reptiles; at its April and May meetings, it was to adopt regulations governing birds and mammals.¹⁵

Over time, that calendaring approach was abandoned and replaced with a more relaxed requirement that the Commission adopt regulations at a series of no fewer than three public meetings.¹⁶ However, the procedure specified for the conduct of those meetings is fairly loose, and is not well-coordinated with existing requirements of the APA.

The proposed legislation would revise the existing meeting provision in Article 1 to make it fully consistent with the Commission's current practice and the requirements of the APA.¹⁷

The proposed legislation would also repeal Fish and Game Code Section 220(b). That provision gave the Commission flexibility to deviate from the former statutory rulemaking calendar based on new information presented in the interval between scheduled rulemaking meetings. With the abandonment of the calendared meetings, that flexibility is no longer required.

Continuity of Regulations Adopted Pursuant to Section 200

When Article 1 was first enacted, it included Section 221. Section 221 was a "sunset provision," providing for the repeal of Article 1, by operation of law, on a specified date.¹⁸

15. See 1957 Cal. Stat. ch. 456, §§ 206-213.

16. See Fish & Game Code § 207.

17. See proposed Fish & Game Code § 255 *infra*. See also Gov't Code §§ 11346.2, 11346.4, 11346.5, 11346.8, 11346.9.

18. See 1957 Cal. Stat. ch. 456, § 221.

Section 250 was added to account for that possible repeal.¹⁹ Section 250 provides that in the event of a repeal of Article 1, any existing regulation that had been adopted pursuant to that article would remain in effect after the repeal.

In the years following the enactment of Article 1, Section 221 was repeatedly amended to extend its sunset date.²⁰ In 2001, Section 221 was finally repealed.²¹ As a result, the Commission's general rulemaking authority under Article 1 is no longer subject to a sunset provision, and there is no need for the special continuity rule provided in Section 250.

The proposed legislation would therefore repeal Section 250.

Other Obsolete or Misplaced Provisions

The proposed legislation would also repeal or amend other Fish and Game Code provisions, to remove obsolete language and distinctions.²² Other provisions would be relocated, to better reflect their function.²³

19. See 1957 Cal. Stat. ch. 456, § 250.

20. See 1957 Cal. Stat. ch. 1549; 1959 Cal. Stat. ch. 1568; 1961 Cal. Stat. ch. 1245; 1963 Cal. Stat. ch. 7 (1st Ex. Sess.); 1965 Cal. Stat. ch. 748; 1969 Cal. Stat. ch. 110; 1973 Cal. Stat. ch. 723; 1975 Cal. Stat. ch. 1083; 1979 Cal. Stat. ch. 1076; 1984 Cal. Stat. ch. 229; 1989 Cal. Stat. ch. 564; 1994 Cal. Stat. ch. 935; 1999 Cal. Stat. ch. 483.

21. See 2001 Cal. Stat. ch. 398.

22. See proposed repeal of Fish & Game Code §§ 215, 218, and 300 *infra*.

23. Fish and Game Code Section 206 would be relocated with other Fish and Game Commission organizational provisions, as Section 110. Fish and Game Code Sections 205.1, 217.5, and 217.6 would be relocated to a new article among other general sport fishing provisions. See proposed Fish & Game Code §§ 7110 and 7115 *infra*.

Conforming Revisions

The proposed legislation would also make conforming revisions as necessary to accommodate the changes described above.²⁴

24. See proposed revisions to Fish & Game Code §§ 460 and 7120, Gov't Code § 11343.4, and Health & Safety Code § 131052 *infra*.

PROPOSED LEGISLATION

TABLE OF CONTENTS

FISH AND GAME CODE363

 Heading of Chapter 2 (commencing with Section 200)
 (amended)363

 Heading of Article 1 (commencing with Section 200) (amended).....363

 Fish & Game Code § 200 (amended). General authority363

 Fish & Game Code §§ 250-285 (added). Special rulemaking
 procedures364

 Article 2. Procedure.....364

 § 250. Application of article364

 § 255. General rulemaking procedure365

 § 260. Distribution of regulations366

 § 265. Exemption from time requirements367

 § 270. Effective date of regulation367

 § 275. Effective period367

CONFORMING REVISIONS369

 Fish & Game Code § 110 (added). Meetings369

 Fish & Game Code § 202 (repealed). Procedure369

 Fish & Game Code § 204 (repealed). Limitation of authority370

 Fish & Game Code § 205.1 (repealed). Automatic process to
 conform sport fishing regulations371

 Fish & Game Code § 206 (repealed). Meetings371

 Fish & Game Code § 207 (repealed). General rulemaking
 procedure372

 Fish & Game Code § 210 (repealed). Distribution of regulations373

 Fish & Game Code § 211 (repealed). Printing of regulations373

 Fish & Game Code § 215 (repealed). Filing of regulations374

 Fish & Game Code § 217.5 (repealed). Persons with disabilities374

 Fish & Game Code § 217.6 (repealed). Human health advisories375

 Fish & Game Code § 218 (repealed). Judicial review375

 Fish & Game Code § 220 (repealed). Special rules.....375

 Fish & Game Code § 240 (repealed). Emergency regulations376

 Fish & Game Code § 250 (repealed). Continuance of regulations376

 Fish & Game Code § 300 (repealed). Filing with Secretary of
 State376

 Fish & Game Code § 399 (added). Emergency regulations376

Chapter 3.5. Emergency Regulations377

 Fish & Game Code § 399. Emergency regulations377

 Fish & Game Code § 460 (amended). Recommendations relating
 to deer377

 Fish & Game Code §§ 7110-7115 (added). Sport fishing
 regulations.....378

Article 1.5. Sport Fishing Regulations378

 Fish & Game Code § 7110. Automatic process to conform sport
 fishing regulations378

 Fish & Game Code § 7115. Required information in regulation
 booklet379

 Fish & Game Code § 7120 (amended). Bag limit379

 Government Code § 11343.4 (amended). Effective date of
 regulation379

 Health and Safety Code § 131052 (amended). Transfer of
 jurisdiction381

PROPOSED LEGISLATION
FISH AND GAME CODE

Heading of Chapter 2 (commencing with Section 200) (amended)

SEC. _____. The heading of Chapter 2 of Division 1 of the Fish and Game Code is amended to read:

CHAPTER 2. ~~GENERAL REGULATORY POWERS~~
REGULATION OF TAKE AND POSSESSION
GENERALLY

Heading of Article 1 (commencing with Section 200) (amended)

SEC. _____. The heading of Article 1 of Chapter 2 of Division 1 of the Fish and Game Code is amended to read:

Article 1. ~~Regulations~~ Authority

Fish & Game Code § 200 (amended). General authority

SEC. _____. Section 200 of the Fish and Game Code is amended to read:

200. (a) There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, ~~amphibia~~ amphibians, and reptiles ~~to the extent and in the manner prescribed in this article.~~

(b) No power is delegated to the commission by this ~~article~~ section to regulate ~~the~~ either of the following:

(1) ~~The taking, possessing, processing, or use of fish, amphibia~~ amphibians, kelp, or other aquatic plants for commercial purposes; ~~and no provision of this code relating or applying thereto, nor any regulation of the commission made pursuant to such provision, shall be affected by this article or any regulation made under this article.~~

(2) The taking or possession of a spike buck or spotted fawn. "Spotted fawn" means a deer one year of age or less that has

spotted pelage. “Spike buck” means a male deer with unbranched antlers on both sides that are more than three inches in length.

(c) This section and any regulations adopted pursuant to this section have no effect on any provision of this code or any regulation adopted pursuant to this code that relates to a matter described in paragraph (1) of subdivision (b).

Comment. Section 200 is amended to delete a reference to the “extent and manner” of regulations. Rules formerly located in this article have been repealed or relocated. See Sections 250-285 (procedure).

The section is also amended to add subdivision and paragraph designations, and make other nonsubstantive changes.

Subdivision (a) restates the first paragraph of Section 200.

Subdivision (b)(1) continues the first part of the second paragraph of Section 200 without substantive change.

Subdivision (b)(2) continues former Section 204(d) without substantive change.

Subdivision (c) restates the second part of the second paragraph of Section 200 without substantive change.

Fish & Game Code §§ 250-285 (added). Special rulemaking procedures

SEC. ____. Article 2 of Chapter 2 of Division 1 is added to the Fish and Game Code, to read:

Article 2. Procedure

§ 250. Application of article

250. (a) Except as provided in subdivision (b), this article applies to a commission regulation that governs the take or possession of any bird, mammal, fish, amphibian, or reptile.

(b) This article does not apply to a regulation governed by subdivision (b) of Section 200 or Section 201.

(c) Except as expressly provided, this article does not supersede any other applicable law that governs the adoption, amendment, or repeal of a regulation.

Comment. Section 250 is new. It makes clear that this article applies to any Fish and Game Commission regulation that governs the take or

possession of any bird, mammal, fish, amphibian, or reptile, except for a regulation that falls within the scope of Section 200(b) or 201. For example, rulemaking under Section 331 (take of antelope) is governed by this article, because it governs the take of a mammal and is not described by Section 200(b) or 201. By contrast, rulemaking under Section 8213 (sale of salmon) is not governed by this article, because regulation of the commercial take of fish is described by Section 200(b).

Subdivision (c) makes clear that, except as expressly indicated (see, e.g., Section 265), the rules in this article do not displace any other law that governs commission rulemaking. Other law may impose additional requirements, either in specific circumstances or generally. See, e.g., Sections 307 (animal scarcity), 325-327 (animal surplus); Gov't Code § 11340 *et seq.* (general state agency rulemaking procedure).

§ 255. General rulemaking procedure

255. (a) When adopting, amending, or repealing a regulation governed by this article, the commission shall conduct the following steps at separate public meetings:

(1) Approve the submission of a notice of proposed action to the Office of Administrative Law.

(2) Consider public comment on the proposed action. The department shall participate in this process by reviewing and responding to all public comment.

(3) Make a final decision on the proposed action.

(b) The meetings required by this section may be regular or special meetings.

(c) The meetings required by this section shall be duly noticed to the public in accordance with subdivision (c) of Section 110 and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(d) Within 45 days after the Commission makes a final decision to adopt, amend, or repeal a regulation governed by this article, the department shall publish and distribute the regulation to each county clerk, each district attorney, and each judge of the superior court in the state.

Comment. Subdivisions (a) through (c) of Section 255 restate and generalize the provisions of former Section 207(a)-(d) to conform to the

rulemaking procedures of the Administrative Procedure Act. See Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Language requiring the Commission to “receive recommendations for regulations” is obsolete and has not been continued. See Gov’t Code § 11340.6 (public submission of rulemaking proposals).

Subdivision (d) combines and generalizes former Sections 207(e) and 210(a).

§ 260. Distribution of regulations

260. (a) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute a regulation governed by this article so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of a regulation governed by this article, beyond what is required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, shall not impair the validity of the regulations.

(b) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations governed by this article, and other public information. The printing contract shall include criteria to ensure that the public information provided in the publication is easy to reference, read, and understand.

(c) Printing contracts authorized by this section for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

(d) Material printed pursuant to subdivision (b) that contains advertisements shall meet all specifications prescribed by the department. The printed material shall not contain advertisements for tobacco products, alcohol, firearms and devices prohibited pursuant to Section 32625 of the Penal Code, Article 2 (commencing with Section 30600) of Chapter 2 of Division 10 of Title 4 of Part 6 of the Penal Code, or any provision listed in Section 16590 of the Penal Code, or firearms not authorized by the

commission as a legal method of sport-hunting, political statements, solicitations for membership in organizations, or any other statement, solicitation, or product advertisement that is in conflict with the purposes for which the material is produced, as determined by the commission.

(e) Neither the department nor the commission shall contract with private entities to print the materials described in subdivision (b) if the letting of those contracts will result in the elimination of civil service positions.

(f) The department or the license agent may give a copy of the current applicable published regulations governed by this article to each person issued a license, at the time the license is issued.

Comment. Section 260 restates former Sections 210(b)-(d) and 211.

§ 265. Exemption from time requirements

265. A regulation governed by this article is not subject to the time periods for the adoption, amendment, or repeal of a regulation prescribed in Sections 11343.4, 11346.4, 11346.8, and 11347.1 of the Government Code.

Comment. Section 265 generalizes the second sentence of former Section 202.

§ 270. Effective date of regulation

270. The adoption, amendment, or repeal of a regulation governed by this article shall become effective at the time specified in the regulation, but not sooner than the date of the filing.

Comment. Section 270 generalizes a part of former Section 215 (effective date of regulation).

§ 275. Effective period

275. A regulation governed by this article shall remain in effect for the period specified in the regulation or until superseded by subsequent regulation of the commission or by statute.

Comment. Section 275 generalizes former Section 220(a).

CONFORMING REVISIONS

Fish & Game Code § 110 (added). Meetings

SEC. ____ . Section 110 is added to the Fish and Game Code, to read:

110. (a) The commission shall hold no fewer than eight regular meetings per calendar year, if the commission has adequate funding for related travel, including funding for department travel. The commission may also hold special meetings or hearings to receive additional input from the department and the public.

(b) The commission shall announce the dates and locations of meetings for the year by January 1 of that year, or 60 days prior to the first meeting, whichever comes first. Meeting locations shall be accessible to the public and located throughout the state. To the extent feasible, meetings shall be held in state facilities. In setting the dates and locations for regular meetings, the commission shall also consider the following factors:

(1) Recommendations of the department.

(2) Opening and closing dates of fishing and hunting seasons.

(3) The schedules of other state and federal regulatory agencies whose regulations affect the management of fish and wildlife of this state.

(c) The commission shall cause the notice of the schedule for regular meetings, and notice of any change in the date and location of a meeting, to be disseminated to the public in a manner that will result in broad dissemination and that complies with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Comment. Section 110 continues former Section 206 without change.

Fish & Game Code § 202 (repealed). Procedure

SEC. ____ . Section 202 of the Fish and Game Code is repealed.

~~202. The commission shall exercise its powers under this article by regulations made and promulgated pursuant to this article. Regulations adopted pursuant to this article shall not be subject to~~

~~the time periods for the adoption, amendment, or repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8, and 11347.1 of the Government Code.~~

Comment. The second sentence of former Section 202 is continued by Section 265.

Fish & Game Code § 204 (repealed). Limitation of authority

SEC. ____ . Section 204 of the Fish and Game Code is repealed.

~~204. The commission has no power under this article to make any regulation authorizing or permitting the taking of:~~

~~(a) Any bird or mammal in any refuge heretofore or hereafter established by statute, the taking or possession of which shall be regulated pursuant to Sections 10500 to 10506, inclusive.~~

~~(b) Elk, the taking or possession of which shall be regulated pursuant to Section 332.~~

~~(c) Antelope, the taking or possession of which shall be regulated pursuant to Section 331.~~

~~(d) Any spike buck or spotted fawn. "Spotted fawn" means a young deer born that year which has spotted pelage. "Spike buck" means a male deer with unbranched antlers on both sides which are more than three inches in length.~~

~~Any regulation establishing a season to compensate for closure of an area due to extreme fire hazard shall be made pursuant to Section 306.~~

~~Any regulation setting a special hunting season for mammals, except deer, or game birds which have increased in number to such an extent that a surplus exists or which are damaging property or are overgrazing their range shall be made pursuant to Section 325.~~

Comment. Former Section 204(d) is continued by Section 200(b)(3). The remainder of former Section 204 is superfluous and is not continued. See Sections 306, 325, 331, 332, and 10500 to 10506.

Fish & Game Code § 205.1 (repealed). Automatic process to conform sport fishing regulations

SEC. _____. Section 205.1 of the Fish and Game Code is repealed.

~~205.1. (a) The commission may establish by regulation an automatic process to conform its sport fishing regulations to federal regulations.~~

~~(b) The department shall provide public notice of any conforming action implemented pursuant to this section.~~

Comment. Former Section 205.1 is continued by Section 7110.

Fish & Game Code § 206 (repealed). Meetings

SEC. _____. Section 206 of the Fish and Game Code is repealed.

~~206. (a) The commission shall hold no fewer than eight regular meetings per calendar year, if the commission has adequate funding for related travel, including funding for department travel. The commission may also hold special meetings or hearings to receive additional input from the department and the public.~~

~~(b) The commission shall announce the dates and locations of meetings for the year by January 1 of that year, or 60 days prior to the first meeting, whichever comes first. Meeting locations shall be accessible to the public and located throughout the state. To the extent feasible, meetings shall be held in state facilities. In setting the dates and locations for regular meetings, the commission shall also consider the following factors:~~

~~(1) Recommendations of the department.~~

~~(2) Opening and closing dates of fishing and hunting seasons.~~

~~(3) The schedules of other state and federal regulatory agencies whose regulations affect the management of fish and wildlife of this state.~~

~~(c) The commission shall cause the notice of the schedule for regular meetings, and notice of any change in the date and location of a meeting, to be disseminated to the public in a manner that will result in broad dissemination and that complies with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

Comment. Former Section 206 is continued without change by Section 110.

Fish & Game Code § 207 (repealed). General rulemaking procedure

SEC. ____ . Section 207 of the Fish and Game Code is repealed.

~~207. (a) Except for emergency regulations, the commission shall consider and adopt regulations pursuant to Sections 203 and 205 at a series of no fewer than three meetings. These meetings may be regular or special meetings that are duly noticed to the public in accordance with subdivision (c) of Section 206 and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

~~(b) At the first meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.~~

~~(c) At the second meeting, the commission shall devote time for open public discussion of proposed regulations presented at the first meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the meeting, the regulations it intends to add, amend, or repeal.~~

~~(d) At the third meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At the meeting, the commission shall add, amend, or repeal regulations relating to any recommendation received at the initial meeting it deems necessary to preserve, properly utilize, and maintain each species or subspecies.~~

~~(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.~~

Comment. Former Section 207 is generally restated in Section 255.

Fish & Game Code § 210 (repealed). Distribution of regulations

SEC. ____ . Section 210 of the Fish and Game Code is repealed.

~~210. (a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 207 to each county clerk, each district attorney, and each judge of the superior court in the state.~~

~~(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.~~

~~(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.~~

~~(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.~~

Comment. Former Section 210(a) is continued by Section 255(d).
Former Section 210(b)-(d) is continued by Section 260.

Fish & Game Code § 211 (repealed). Printing of regulations

SEC. ____ . Section 211 of the Fish and Game Code is repealed.

~~211. (a) Material printed pursuant to subdivision (d) of Section 210 that contains advertisements shall meet all specifications prescribed by the department. The printed material shall not contain advertisements for tobacco products, alcohol, firearms and devices prohibited pursuant to Section 32625 of the Penal Code, Article 2 (commencing with Section 30600) of Chapter 2 of Division 10 of Title 4 of Part 6 of the Penal Code, or any provision listed in Section 16590 of the Penal Code, or firearms not~~

~~authorized by the commission as a legal method of sport hunting, political statements, solicitations for membership in organizations, or any other statement, solicitation, or product advertisement that is in conflict with the purposes for which the material is produced, as determined by the commission. The printing contract shall include criteria to ensure that the public information provided in the publication is easy to reference, read, and understand.~~

~~(b) Neither the department nor the commission shall contract with private entities to print the materials described in subdivision (d) of Section 210 if the letting of those contracts will result in the elimination of civil service positions.~~

Comment. Former Section 211 is continued by Section 260.

Fish & Game Code § 215 (repealed). Filing of regulations

SEC. ____. Section 215 of the Fish and Game Code is repealed.

~~215. Every regulation of the commission made pursuant to this article shall be filed with the Secretary of State, and shall become effective at the time specified therein, but not sooner than the date of the filing.~~

Comment. The second clause of former Section 215 (effective date of regulation) is continued by Section 270.

The first clause of former Section 215 (required filing of regulation with Secretary of State) is superfluous and not continued. See Gov't Code § 11343.

Fish & Game Code § 217.5 (repealed). Persons with disabilities

SEC. ____. Section 215 of the Fish and Game Code is repealed.

~~217.5. (a) The department shall identify property it owns or manages that includes areas for sport fishing which are accessible to disabled persons.~~

~~(b) Commencing with the booklet of sport fishing regulations published by the commission in 1986, the availability of sport fishing areas, identified by the department as accessible to disabled persons under subdivision (a), shall be noted in the booklet of regulations, together with telephone numbers and instructions for obtaining a list of those areas from regional department offices.~~

Comment. Former Section 217.5 is continued by Section 7115(a)-(b).

Fish & Game Code § 217.6 (repealed). Human health advisories

SEC. ____. Section 215 of the Fish and Game Code is repealed.

~~217.6. Commencing with the booklet of sportfishing regulations published in 1987, the booklet shall also contain any human health advisories relating to fish which are formally issued by the State Department of Health Services or summaries of those human health advisories. The summaries shall be prepared in consultation with the State Department of Health Services.~~

Comment. Former Section 217.6 is continued by Section 7115(c).

Fish & Game Code § 218 (repealed). Judicial review

SEC. ____. Section 218 of the Fish and Game Code is repealed.

~~218. Any regulation of the commission made pursuant to this article shall be subject to review in accordance with law by any court of competent jurisdiction.~~

Comment. Former Section 218 is obsolete and is not continued. See Gov't Code § 11350.

Fish & Game Code § 220 (repealed). Special rules

SEC. ____. Section 220 of the Fish and Game Code is repealed.

~~220. (a) Any regulation of the commission added or amended pursuant to this article shall remain in effect for the period specified therein or until superseded by subsequent regulation of the commission or by statute.~~

~~(b) Notwithstanding this article, the commission may add, amend, or repeal regulations at any regular or special meeting if facts are presented to the commission which were not presented at the time the original regulations were adopted and if the commission determines that those regulations added, amended, or repealed are necessary to provide proper utilization, protection, or conservation of fish and wildlife species or subspecies.~~

Comment. Former Section 220(a) is continued without substantive change by Section 275. Former Section 220(b) is obsolete and is not continued.

Fish & Game Code § 240 (repealed). Emergency regulations

SEC. ____ . Article 1.5 of Chapter 2 of Division 1 of the Fish and Game Code is repealed.

Comment. Former Section 240 is continued by Section 399.

Fish & Game Code § 250 (repealed). Continuance of regulations

SEC. ____ . Article 2 of Chapter 2 of Division 1 of the Fish and Game Code is repealed.

Comment. Former Section 250 is repealed as obsolete. Section 250 was originally enacted when the Fish and Game Commission's authority to regulate the take and possession of wildlife was subject to a series of sunset provisions set forth in Section 221. See 1957 Cal. Stat. ch. 1549; 1959 Cal. Stat. ch. 1568; 1961 Cal. Stat. ch. 1245; 1963 Cal. Stat. ch. 7 (1st Ex. Sess.); 1965 Cal. Stat. ch. 748; 1969 Cal. Stat. ch. 110; 1973 Cal. Stat. ch. 723; 1975 Cal. Stat. ch. 1083; 1979 Cal. Stat. ch. 1076; 1984 Cal. Stat. ch. 229; 1989 Cal. Stat. ch. 564; 1994 Cal. Stat. ch. 935; 1999 Cal. Stat. ch. 483.

The purpose of Section 250 was to provide for the continuity of adopted regulations in the event that the Fish and Game Commission's rulemaking authority were to be repealed by operation of law. That possibility is no longer a concern, as Section 221 was itself repealed in 2001. See 2001 Cal. Stat. ch. 398.

Fish & Game Code § 300 (repealed). Filing with Secretary of State

SEC. ____ . Section 300 of the Fish and Game Code is repealed.

~~300. A regulation adopted pursuant to this code shall be filed with the Secretary of State, as required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

Comment. Former Section 300 is superfluous and is not continued. See Gov't Code § 11343.

Fish & Game Code § 399 (added). Emergency regulations

SEC. ____ . Chapter 3.5 is added to Division 1 of the Fish and Game Code, to read:

CHAPTER 3.5. EMERGENCY REGULATIONS

Fish & Game Code § 399. Emergency regulations

399. Notwithstanding any other provision of this code, the commission, when adopting, amending, or repealing a regulation pursuant to authority vested in it by this code, may, after at least one hearing, adopt, amend, or repeal that regulation pursuant to Section 11346.1 of the Government Code, if it makes either of the following findings:

(a) That the adoption, amendment, or repeal is necessary for the immediate conservation, preservation, or protection of birds, mammals, fish, amphibians, or reptiles, including, but not limited to, their nests or eggs.

(b) That the adoption, amendment, or repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Comment. Section 399 restates former Section 240(a) without substantive change, except to add a reference to amphibians.

Former Section 240(b) is redundant and is not continued. See Gov't Code Sections 11346.1(a)(1) & 11349.6 (review of proposed emergency regulation).

Fish & Game Code § 460 (amended). Recommendations relating to deer

SEC. ____ . Section 460 of the Fish and Game Code is amended to read:

460. Prior to ~~the February~~ each meeting of the commission as ~~required in~~ at which the commission considers the regulation of deer and takes action pursuant to paragraph (1) of subdivision (a) of Section 207 255, the department shall recommend to the commission those deer herd units to be placed under a general deer hunting season. At the same time, the department shall recommend to the commission, subject to the provisions of Sections 458 and 459, whether any antlerless deer should be taken and in what deer herd units antlerless deer are to be taken. If in the judgment of the department there are deer herd 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 units where hunter numbers should be restricted and which should be removed from the general deer hunting season designation. The department shall inform the commission of the condition of each deer herd 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, 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 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 unit. At the same time, the department shall recommend 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.

Comment. Section 460 is amended to correct an obsolete cross-reference.

Fish & Game Code §§ 7110-7115 (added). Sport fishing regulations

SEC. _____. Article 1.5 is added to Chapter 1 of Part 2 of Division 6 of the Fish and Game Code, to read:

Article 1.5. Sport Fishing Regulations

Fish & Game Code § 7110. Automatic process to conform sport fishing regulations

7110. (a) The commission may establish by regulation an automatic process to conform its sport fishing regulations to federal regulations.

(b) The department shall provide public notice of any conforming action implemented pursuant to this section.

Comment. Section 7110 continues former Section 205.1 without change.

Fish & Game Code § 7115. Required information in regulation booklet

7115. (a) The department shall identify property it owns or manages that includes areas for sport fishing accessible to persons with disabilities.

(b) Commencing with the booklet of sport fishing regulations published by the commission in 1986, the availability of sport fishing areas, identified by the department as accessible to persons with disabilities under subdivision (a), shall be noted in the booklet of regulations, together with telephone numbers and instructions for obtaining a list of those areas from regional department offices.

(c) Commencing with the booklet of sportfishing regulations published in 1987, the booklet shall also contain any human health advisories relating to fish that are formally issued by the State Department of Public Health, or summaries of those human health advisories. The summaries shall be prepared in consultation with the State Department of Public Health.

Comment. Subdivisions (a) and (b) of Section 7115 continue former Section 217.5 without substantive change.

Subdivision (c) continues former Section 217.6 without substantive change.

Fish & Game Code § 7120 (amended). Bag limit

SEC. _____. Section 7120 of the Fish and Game Code is amended to read:

7120. It is unlawful for any person to possess more than one daily bag limit of any fish taken under a license issued pursuant to Section 714 or Article 3 (commencing with Section 7145) unless authorized by regulations adopted by the commission pursuant to ~~Section 206~~.

Comment. Section 7120 is amended to update a cross-reference.

Government Code § 11343.4 (amended). Effective date of regulation

SEC. _____. Section 11343.4 of the Government Code is amended to read:

11343.4. (a) Except as otherwise provided in subdivision (b), a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on a quarterly basis as follows:

(1) January 1 if the regulation or order of repeal is filed on September 1 to November 30, inclusive.

(2) April 1 if the regulation or order of repeal is filed on December 1 to February 29, inclusive.

(3) July 1 if the regulation or order of repeal is filed on March 1 to May 31, inclusive.

(4) October 1 if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

(b) The effective dates in subdivision (a) shall not apply in all of the following:

(1) The effective date is specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.

(2) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(3) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

(4)(A) A regulation adopted by the Fish and Game Commission ~~pursuant to~~ that is governed by Article 4 2 (commencing with Section ~~200~~ 250) of Chapter 2 of Division 1 of the Fish and Game Code.

(B) A regulation adopted by the Fish and Game Commission that requires a different effective date in order to conform to a federal regulation.

Comment. Section 11343.4 is amended to update a cross-reference.

Health and Safety Code § 131052 (amended). Transfer of jurisdiction

SEC. _____. Section 131052 of the Health and Safety Code is amended to read:

131052. In implementing the transfer of jurisdiction pursuant to this article, the State Department of Public Health succeeds to and is vested with all the statutory duties, powers, purposes, responsibilities, and jurisdiction of the former State Department of Health Services as they relate to public health as provided for or referred to in all of the following provisions of law:

(1) Sections 550, 555, 650, 680, 1241, 1658, 2221.1, 2248.5, 2249, 2259, 2259.5, 2541.3, 2585, 2728, 3527, 4017, 4027, 4037, 4191, 19059.5, 19120, 22950, 22973.2, and 22974.8 of the Business and Professions Code.

(2) Sections 56.17, 1812.508, and 1812.543 of the Civil Code.

(3) Sections 8286, 8803, 17613, 32064, 32065, 32066, 32241, 49030, 49405, 49414, 49423.5, 49452.6, 49460, 49464, 49565, 49565.8, 49531.1, 56836.165, and 76403 of the Education Code.

(4) Sections 405, 6021, 6026, 18963, 30852, 41302, and 78486 of the Food and Agricultural Code.

(5) Sections 307, 355, 422, 7572, 7574, 8706, 8817, and 8909 of the Family Code.

(6) Sections ~~217.6, 1507~~, 1786, 4011, 5671, 5674, 5700, 5701, 5701.5, 7115, 7715, and 15700 of the Fish and Game Code.

(7) Sections 855, 51010, and 551017.1 of the Government Code. For purposes of subdivision (s) of Section 6254 of the Government Code, the term “State Department of Health Services” is hereby deemed to refer to the State Department of Public Health.

(8) (A) Sections 475, 1180.6, 1418.1, 1422.1, 1428.2, 1457, 1505, 1507.1, 1507.5, 1570.7, 1599.2, 1599.60, 1599.75, 1599.87, 2002, 2804, 11362.7, 11776, 11839.21, 11839.23, 11839.24, 11839.25, 11839.26, 11839.27, 11839.28, 11839.29, 11839.30, 11839.31, 11839.32, 11839.33, 11839.34, 17920.10, 17961, 18897.2, 24185, 24186, 24187, 24275, 26101, 26122, 26134, 26155, 26200, and 26203.

(B) Chapters 1, 2, 2.05, 2.3, 2.35, 2.4, 3.3, 3.9, 3.93, 3.95, 4, 4.1, 4.5, 5, 6, 6.5, 8, 8.3, 8.5, 8.6, 9, and 11 of Division 2.

(C) Articles 2 and 4 of Chapter 2, Chapter 3, and Chapter 4 of Part 1, Part 2 and Part 3 of Division 101.

(D) Division 102, including Sections 102230 and 102231.

(E) Division 103, including Sections 104145, 104181, 104182, 104182.5, 104187, 104191, 104192, 104193, 104316, 104317, 104318, 104319, 104320, 104321, 104324.2, 104324.25, 104350, 105191, 105251, 105255, 105280, 105340, and 105430.

(F) Division 104, including Sections 106615, 106675, 106770, 108115, 108855, 109282, 109910, 109915, 112155, 112500, 112650, 113355, 114460, 114475, 114650, 114710, 114850, 114855, 114985, 115061, 115261, 115340, 115736, 115880, 115885, 115915, 116064, 116183, 116270, 116365.5, 116366, 116375, 116610, 116751, 116760.20, 116825, 117100, 117924, and 119300.

(G) Division 105, including Sections 120262, 120381, 120395, 120440, 120480, 120956, 120966, 121155, 121285, 121340, 121349.1, 121480, 122410, and 122420.

(H) Part 1, Part 2 excluding Articles 5, 5.5, 6, and 6.5 of Chapter 3, Part 3 and Part 5 excluding Articles 1 and 2 of Chapter 2, Part 7, and Part 8 of Division 106.

(9) Sections 799.03, 10123.35, 10123.5, 10123.55, 10123.10, 10123.184, and 11520 of the Insurance Code.

(10) Sections 50.8, 142.3, 144.5, 144.7, 147.2, 4600.6, 6307.1, 6359, 6712, 9009, and 9022 of the Labor Code.

(11) Sections 4018.1, 5008.1, 7501, 7502, 7510, 7511, 7515, 7518, 7530, 7550, 7553, 7575, 7576, 11010, 11174.34, and 13990 of the Penal Code.

(12) Section 4806 of the Probate Code.

(13) Sections 15027, 25912, 28004, 30950, 41781.1, 42830, 43210, 43308, 44103, and 71081 of the Public Resources Code.

(14) Section 10405 of the Public Contract Code.

(15) Sections 883, 1507, and 7718 of the Public Utilities Code.

(16) Sections 18833, 18838, 18845.2, 18846.2, 18847.2, 18863, 30461.6, 43010.1, and 43011.1 of the Revenue and Taxation Code.

(17) Section 11020 of the Unemployment Insurance Code.

(18) Sections 22511.55, 23158, 27366, and 33000 of the Vehicle Code.

(19) Sections 5326.9, 5328, 5328.15, 14132, 16902, and 16909, and Division 24 of the Welfare and Institutions Code. Payment for services provided under the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program pursuant to subdivision (aa) of Section 14132 and Division 24 shall be made through the State Department of Health Care Services. The State Department of Public Health and the State Department of Health Care Services may enter into an interagency agreement for the administration of those payments. This paragraph, to the extent that it applies to the Family PACT Waiver Program, shall become inoperative on June 30, 2012.

(20) Sections 13176, 13177.5, 13178, 13193, 13390, 13392, 13392.5, 13393.5, 13395.5, 13396.7, 13521, 13522, 13523, 13528, 13529, 13529.2, 13550, 13552.4, 13552.8, 13553, 13553.1, 13554, 13554.2, 13816, 13819, 13820, 13823, 13824, 13825, 13827, 13830, 13834, 13835, 13836, 13837, 13858, 13861, 13862, 13864, 13868, 13868.1, 13868.3, 13868.5, 13882, 13885, 13886, 13887, 13891, 13892, 13895.1, 13895.6, 13895.9, 13896, 13896.3, 13896.4, 13896.5, 13897, 13897.4, 13897.5, 13897.6, 13898, 14011, 14012, 14015, 14016, 14017, 14019, 14022, 14025, 14026, 14027, and 14029 of the Water Code.

Comment. Section 131052 is amended to update a cross-reference to former Fish and Game Code Section 217.6, which is continued by Fish and Game Code Section 7115. The section is also amended to delete a cross-reference to Fish and Game Code Section 1507, which has been repealed.
