

Memorandum 2013-12

Fish and Game Law: Proposed Division 1. General Provisions

This memorandum presents a staff draft of proposed Division 1 of a reorganized Fish and Game Code. Proposed Division 1 (“General Provisions”) is divided into two parts:

- Part 1. Preliminary Provisions
- Part 2. Definitions

The content of the two proposed parts is described and discussed below.

The staff has taken a fairly conservative approach in preparing the attached draft. For the most part, the language used in the draft is drawn from existing law verbatim. Where changes have been made (either to conform to standard legislative drafting practices or correct clear defects), the changes have been noted in the corresponding Comment (which will be included in any final recommendation). Courts have generally treated Commission Comments as evidence of legislative intent.

There are “Staff Notes” following some provisions of the proposed law. Some of the Staff Notes identify issues that will require future attention. Others solicit public comment in response to specific questions posed by the staff. Staff Notes are intended to be temporary and will not be included in any final recommendation.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code or to the “proposed” provisions of the attached draft.

PRELIMINARY PROVISIONS

Proposed Part 1 contains “preliminary provisions.” Preliminary provisions are rules that affect the code as a whole (e.g., rules of construction and transitional rules). It is standard drafting practice to locate such provisions at the

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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.

beginning of a code. See, e.g., Civ. Code §§ 2-21; Fam. Code §§ 1-13; Prob. Code §§ 1-13.

The Fish and Game Code’s preliminary provisions are currently located at the beginning of the code, but are mixed together with definitions in a chapter entitled “General Definitions.” In the attached draft, the preliminary provisions are separated from the definitions and located under the heading “Preliminary Provisions.”

For the most part, proposed Part 1 simply collects (and renumbers) existing preliminary provisions without significant change. However, there are a few minor issues worth noting. They are discussed below.

Restatement and Continuation

Proposed Section 20(a) would continue the substance of the first sentence of Section 3. It provides:

A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

That is a standard preliminary provision in the Codes.

When the Commission recently recodified the deadly weapon provisions of the Penal Code, it elaborated on that basic principle slightly, stating expressly how references to the former law and the new law should be construed. See Penal Code § 16010(b)-(c); *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217, 346-47 (2009).

Similar provisions, with corresponding Comment language, have been included in proposed Section 20(b)-(c). However, the staff has made one minor change to those provisions. They have been broadened slightly to encompass references in regulations. Thus:

20. ...

(b) A reference in a statute or regulation to a previously existing provision that is restated and continued in this code shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.

(c) A reference in a statute or regulation to a provision of this code that is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.

Are those provisions acceptable?

Terminology Comment

The Comment to proposed Section 20 includes a description of the standard terminology used in Commission Comments. This will aid in interpreting the meaning of the Commission's Comments for all of the other provisions of the proposed law.

The text of the proposed terminology Comment is drawn verbatim (with the exception of references to the Fish and Game Code) from equivalent Comments that were used when the Commission recommended enactment of the Family Code and recodification of the Probate Code. That uniformity of language is helpful in promoting consistent interpretation of Commission Comments.

In each prior instance, the terminology Comment was attached to the provision that addresses the restatement and continuation of former law. See Fam. Code § 2; Prob. Code § 2. The same is true in the attached draft.

Transitional Provisions

The second sentence of Fish and Game Code Section 3 provides:

This code shall not impair any privilege granted or right acquired under any of the laws of this State prior to the date it takes effect.

That provision dates back to the enactment of the Fish and Game Code in 1957. See 1957 Cal. Stat. ch. 456, § 2. Given its wording and history, the sentence appears to be a transitional provision governing the enactment of the Fish and Game Code *as a whole*. In other words, the sentence provides that the enactment of "this code" in 1957 did not impair any rights or privileges acquired before the new code took effect. Similar provisions exist in many other codes, with similarly limited effect. See, e.g., Civ. Code § 6; Code Civ. Proc. § 8; Corp. Code § 4.

Given that limited transitional effect, the staff believes that the provision is now obsolete. It has served its purpose, preserving privileges and rights that predated the 1957 enactment of the Fish and Game Code. It appears to say nothing about the effect of any subsequent changes to the code. Nor would it address the proposed recodification of the code.

In the two codes that were recently enacted (or recodified) on the Commission's recommendation, a provision of the type discussed above was not used. Instead, the Commission drafted a comprehensive transitional provision that addressed the effect of any "new law," which includes the act that created

the code as well as any addition, amendment, or repeal of any provision of the code going forward. See Fam. Code § 4; Prob. Code § 3.

An equivalent provision is included in the attached draft, as proposed Section 25. As a default rule, proposed Section 25 would provide that any “new law” applies to “all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date.” See proposed Section 25(c). However, proposed Section 25 includes some important exceptions:

- The default rule can be overridden by express language. Thus, the Legislature is free to enact special transitional rules where appropriate. Proposed Section 25(b).
- A new law will not disturb the validity of actions taken or orders made prior to the operative date of the new law. Proposed Section 25(e).
- A person is not liable for any action that was lawful under the law that existed at the time of the action. Proposed Section 25(f).
- A court can decide not to apply an otherwise applicable new law if doing so would substantially interfere with “the effective conduct of the proceedings” or with “the rights of the parties or other interested persons.” Proposed Section 25(h).

Where the new law does not apply, the “old law” would apply. Proposed Section 25(g).

The staff believes that the proposed provision would provide useful guidance on the effect of any changes that the Commission may recommend in the course of recodifying the code, as well as any future changes that are made after the code is recodified. **The staff recommends that proposed Section 25 be included in the proposed law.**

DEFINITIONS

Proposed Part 2 collects all of the general definitions from existing Chapter 1 (commencing with Section 1) of Division 0.5 of the Fish and Game Code.

Proposed Part 2 does *not* include the special definitions that are provided in Chapter 2 (commencing with Section 90) of Division 0.5 of the Fish and Game Code. Pursuant to Section 90, those definitions only apply to specified provisions of the code, relating to the regulation of fish and other aquatic resources. When the Commission addresses those provisions, later in the course of the study, it can decide where it would be best to locate the special definitions.

Proposed Part 2 simply collects, sorts into alphabetical order, and renumbers the existing general definitions, without significant change. However, there are a few minor issues worth noting. They are discussed below.

“Fish”

Proposed Section 195 would continue existing Section 45 without change. As can be seen, the term “fish” is defined to include many types of animals that are not considered to be “fish” in the common or scientific understanding of that word. For example, the definition encompasses frogs, newts, crayfish, clams, snails, jellyfish, and insects.

That broad definition of the term “fish” is not a problem *legally*. Definitions are merely a drafting convenience, and the Legislature can define any term to mean anything that it pleases. However, assigning a special and counter-intuitive meaning to a commonly used word like “fish” could cause *practical* problems.

For example, many readers will not recognize that “fish” is a defined term and will instead assume that it is being used with its common meaning. This could lead to errors and disputes.

A perhaps more serious problem is that the Legislature does not have a convenient term that it can use when it means to regulate fish *as fish* (i.e., where it does not intend to also regulate amphibians, crustaceans, and invertebrates). In order to achieve that result, it would need to use convoluted drafting to override the general definition.

Or more problematic still, the Legislature might inadvertently use the term “fish” without any special override of the general definition, inadvertently giving a statute a broader effect than was intended.

These problems are not hypothetical. Even just examining the other general definitions, the staff finds evidence of this terminological confusion. For example, proposed Section 210 (which would continue Section 48) defines “hook” as an implement used to “catch or hold fish or amphibia.” As noted above, the term “fish” *includes* amphibians, so there is no need to reference amphibians expressly in Section 48. This suggests that the Legislature was either intentionally being redundant in drafting that section or it was using “fish” in a narrower sense than its defined meaning. Query: does “hook” include an implement used to catch squid (which, zoologically, are mollusks)? For other examples where the term “fish” may have been meant to have a narrower meaning than provided in its definition, see proposed Sections 115, 120, 130, 145, 150, 205, 250, 255, 265, 295.

While the potential terminological confusion in the examples given above may be harmless and easily resolved (under the general rule stated in proposed Section 100, that the definitions yield where the context requires) there may be other instances where any uncertainty about the meaning of the term “fish” could lead to significant disputes.

For example, under the California Endangered Species Act, the defined term “endangered species” can include “a bird, mammal, fish, amphibian, reptile, or plant.” Section 2062. The same list is used in Sections 2067 (threatened species) and 2068 (candidate species). Does the inclusion of the term “fish” in those provisions mean that they include mollusks, crustaceans, and insects?

In 1980, the Fish and Game Commission proposed listing two species of butterflies as endangered species, by regulation. The Office of Administrative Law disapproved the regulation, concluding that “insects are not fish.” See Memorandum 1998-60, p. 10 (discussing the scope of OAL review of regulations). In 1998, the Attorney General also opined that insects are not included within the definition of “endangered species.” The opinion relied exclusively on zoological classifications, without any reference to the counter-zoological definition of “fish” provided in Section 45. See 81 Ops. Cal. Att’y Gen. 222 (1998).

In other words, despite the fact that “fish” is expressly defined to include insects, there are important instances where the term has been interpreted more narrowly, as excluding insects.

The staff suspects that there are many other important and potentially contentious regulatory provisions in the Fish and Game Code that use the term “fish” to define their scope, without any clear indication of whether they also regulate amphibians, crustaceans, mollusks, and invertebrates.

If the Commission were creating fish and game law from scratch, it would be best to use the term “fish” to refer only to fish. A broader term, such as “aquatic animal” could be used where a broader class is intended. That would avoid any misunderstanding or drafting ambiguities.

However, we are not drafting from scratch. Any attempt to realign the terminology as described above would require an individualized analysis of each of the 660 Fish and Game Code sections that use the term “fish,” in an attempt to determine whether the term was used with its defined meaning or with a narrower meaning. The staff expects that most of that analysis would be inconclusive, with no clear evidence of legislative intent. Moreover, where the

stakes are the highest and clarification would be the most useful, it seems likely that any change would benefit one stakeholder group over another, leading to significant political controversy. If so, very clear evidence of legislative intent would be required in order to justify making a change.

For those reasons, the staff recommends that the Commission note the terminological problem in its eventual report to the Legislature, but not make any attempt to systematically clarify the meaning of the term. If any member of the public sees the matter differently, input on the issue would be helpful.

“Kelp”

Proposed Section 215 would continue the definition of “kelp” provided in Section 51, as follows:

“Kelp” means kelp or other marine aquatic plants and the seeds thereof.

This presents the same type of problem as the definition of “fish,” discussed above. The definition uses a common term, with an established common and scientific meaning (“kelp” is a particular type of seaweed), to stand for a much broader class (all types of seaweed). Imagine if a statute defined the term “daffodil” to mean “daffodil or other terrestrial plants.”

A person reading the term “kelp” (or “daffodil”) may not realize that the word is a defined term of art, with a much broader meaning than expected.

And, as discussed above, the Legislature may run into problems if it wishes to regulate kelp *as kelp*.

Although the scope of the problem is much smaller than the problem with “fish” (there are only 40 code sections that use the term “kelp”), the staff is still skeptical of the practicability of addressing the issue.

For the same reasons as in the preceding discussion of “fish,” the staff recommends that the Commission note the terminological problem in its eventual report to the Legislature, but not make any attempt to systematically clarify the meaning of the term. If any member of the public sees the matter differently, input on the issue would be helpful.

“Mammal”

Proposed Section 220 would continue the definition of “mammal” provided in existing Section 54, as follows:

“Mammal” means any wild or feral mammal or any part thereof, but not any wild, feral, or undomesticated burro.

This is the inverse of the “fish” problem discussed above. Rather than having a *broader* meaning than expected, “mammal” has a *narrower* meaning than expected (zoologically, burros are indeed “mammals”).

Again, the special definition of a common term could lead to misunderstanding, if readers do not know that the term is specially defined.

The limited definition could also lead to unintended consequences, if the Legislature uses the term “mammal” without intending to omit burros. For a possible example, Section 308.5 provides:

For the preservation, protection and restoration of mountain sheep and other birds and mammals in arid regions of the state, the commission, in cooperation with the agency authorized to manage the land, may prohibit any activity, including but not limited to camping, in the vicinity of waterholes, springs, seeps, and other watering places which are on public lands. The department may enter into agreements with other state and federal agencies controlling public lands for the purpose of posting such areas.

Under the governing definition of “mammal,” this provision does not authorize the Fish and Game Commission to limit activity near water sources for the purposes of protecting wild burros. Was that the Legislature’s intention? Legislative intent research would be required in order to be sure. Similar research and analysis would be required for the other 197 Fish and Game Code sections that use the term “mammal.”

For those reasons, the staff recommends that the Commission note the terminological problem in its eventual report to the Legislature, but not make any attempt to systematically clarify the meaning of the term. If any member of the public sees the matter differently, input on the issue would be helpful.

CONCLUSION

The attached draft represents an initial attempt to reorganize the general provisions of the Fish and Game Code. There may be other provisions that should also be located in the preliminary provisions, scattered elsewhere in the code. Over the remainder of this study, if the staff finds any provision that has code-wide application, it can be added to the content of proposed Division 1.

The staff invites public comment on any of the issues raised in this memorandum or the attached draft.

In addition, the staff would appreciate comment on whether any of the provisions included in the attached draft present the kinds of problems with consistency, redundancy, or ambiguity as to program authority or funding sources that the Commission has been tasked with addressing. See 2012 Cal. Stat. res. ch. 108. Because the Commission is new to fish and game law, it is important that subject matter experts assist in identifying such problems as the Commission proceeds through the code.

Respectfully submitted,

Brian Hebert
Executive Director

FISH AND WILDLIFE CODE

1 **Staff Note:** This is a preliminary staff draft of a proposed reorganization of specified
2 provisions of the Fish and Game Code.

3 Statutory cross-references that cannot yet be adjusted (because the referenced provisions have
4 not yet been reorganized) are set out in boldface type, for later attention.

5 A draft of an official Commission “Comment” follows each proposed section. Such Comments
6 will be included in any final recommendation. They serve to indicate the source of each section
7 and to describe how it compares with prior law. Courts have routinely held that the Commission’s
8 Comments are evidence of legislative intent with regard to any legislation that implements a
9 Commission recommendation. For guidance on the terminology used in Commission Comments,
10 see the Comment following proposed Section 20.

11 There is a “disposition table” at the end of this document. It summarizes, in tabular form, the
12 disposition of every provision that has been included in this draft. If an existing provision would
13 be repealed as unnecessary, the table indicates that provision as “omitted.”

14 Some provisions of this draft may be followed by a “Staff Note.” Staff Notes are intended to be
15 temporary and will not be part of the Commission’s final recommendation. They serve to flag
16 issues requiring special attention or treatment.

17 The Commission welcomes public comment on any issue relating to the content of this draft.
18 The Commission is particularly interested in comments on any of the following matters:

19 (1) Responses to any questions posed in “Staff Notes.”

20 (2) Any inconsistency, obsolescence, ambiguity, or problems relating to program authority and
21 funding, whether *within* the provisions of this draft or *between* the provisions of this draft and
22 other provisions of law.

23 (3) Provisions that should have been included in this draft but were not (or provisions included
24 in this draft that should have been located elsewhere).

25 (4) Technical drafting errors.

26 Comments should be directed to Brian Hebert at bhebert@clrc.ca.gov.

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1 DIVISION 1. GENERAL PROVISIONS

2 CHAPTER 1. PRELIMINARY PROVISIONS

3 **§ 10. Code title**

4 10. This code shall be known as the Fish and Wildlife Code.

5 **Comment.** Section 10 continues former Section 1 without change, except as indicated below:
6 The following nonsubstantive change was made:

- 7 • The word “Game” was replaced with “Wildlife.”

8 **§ 15. Application of part**

9 15. Unless the provision or context otherwise requires, the provisions of this part
10 govern the construction of this code.

11 **Comment.** Section 15 is new. It is a common general provision in the codes. See, e.g., Prob.
12 Code § 6.

13 **§ 20. Restatement and continuation**

14 20. (a) A provision of this code, insofar as it is substantially the same as a
15 previously existing provision relating to the same subject matter, shall be
16 construed as a restatement and continuation thereof and not as a new enactment.

17 (b) A reference in a statute or regulation to a previously existing provision that is
18 restated and continued in this code shall, unless a contrary intent appears, be
19 deemed a reference to the restatement and continuation.

20 (c) A reference in a statute or regulation to a provision of this code that is
21 substantially the same as a previously existing provision, shall, unless a contrary
22 intent appears, be deemed to include a reference to the previously existing
23 provision.

24 **Comment.** Subdivision (a) of Section 20 continues the first sentence of former Section 3
25 without change, except as indicated below:

26 The following nonsubstantive change was made:

- 27 • The sentence was restated in the singular.

28 Subdivision (b) is drawn from Government Code Section 9604.

29 Subdivision (c) is drawn from Family Code Section 2.

30 A number of terms and phrases are used in the Comments to the sections of the Fish and
31 Wildlife Code to indicate the sources of the sections and to describe how they compare with prior
32 law. The following discussion is intended to provide guidance in interpreting the terminology
33 most commonly used in the Comments.

34 (1) *Continues without change.* A new provision “continues” a former provision “without
35 change” if the two provisions are identical or nearly so. In some cases, there may be insignificant
36 technical differences, such as where punctuation is changed without a change in meaning. Some
37 Comments may describe the relationship by simply stating that the Fish and Wildlife Code
38 provision “continues” or is “the same as” a former provision, or is “the same as” a provision of a
39 uniform act.

1 (2) *Continues without substantive change.* A new provision “continues” a former provision
2 “without substantive change” if the substantive law remains the same but the language differs to
3 an insignificant degree.

4 (3) *Restates without substantive change.* A new provision “restates” a former provision
5 “without substantive change” if the substantive law remains the same but the language differs to a
6 significant degree. Some Comments may describe the new provision as being the “same in
7 substance.”

8 (4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,”
9 the Comment may say that the former provision is continued or restated but also note the specific
10 differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

11 (5) *Generalizes, broadens, restates in general terms.* A new provision may be described as
12 “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This
13 description means that a limited rule has been expanded to cover a broader class of cases.

14 (6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new
15 provision deals with the same subject as the former provision but treats it in a significantly
16 different manner.

17 (7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

18 (8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for
19 a new provision, typically a source other than California statutes. For example, a provision may
20 be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may
21 be useful to consult any available commentary or interpretation of the source from which the new
22 provision is drawn for background information.

23 (9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not
24 previously been enacted into statutory law.

25 (10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular
26 rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under
27 prior law was doubtful or contradictory.

28 (11) *Statement in Comment that section is “comparable” to another section.* A Comment may
29 state that a provision is “comparable” to another provision. If the Comment to a section notes that
30 another section is “comparable,” that does not mean that the other section is the same or
31 substantially the same. The statement is included in the Comment so that the statute user is
32 alerted to the other section and can review the cases under that section for possible use in
33 interpreting the section containing the statement in the Comment.

34 **§ 25. Transitional provision**

35 25. (a) As used in this section:

36 (1) “New law” means either of the following, as the case may be:

37 (A) The act that enacted this code.

38 (B) The act that makes a change in this code, whether effectuated by
39 amendment, addition, or repeal of a provision of this code.

40 (2) “Old law” means the applicable law in effect before the operative date of the
41 new law.

42 (3) “Operative date” means the operative date of the new law.

43 (b) This section governs the application of the new law except to the extent
44 otherwise expressly provided in the new law.

45 (c) Subject to the limitations provided in this section, the new law applies on the
46 operative date to all matters governed by the new law, regardless of whether an
47 event occurred or circumstance existed before, on, or after the operative date,

1 including, but not limited to, commencement of a proceeding, making of an order,
2 or taking of an action.

3 (d) If a document or paper is filed before the operative date, the contents,
4 execution, and notice thereof are governed by the old law and not by the new law;
5 but subsequent proceedings taken after the operative date concerning the
6 document or paper, including an objection or response, a hearing, an order, or
7 other matter relating thereto is governed by the new law and not by the old law.

8 (e) If an order is made before the operative date, or an action on an order is
9 taken before the operative date, the validity of the order or action is governed by
10 the old law and not by the new law. Nothing in this subdivision precludes
11 proceedings after the operative date to modify an order made, or alter a course of
12 action commenced, before the operative date to the extent proceedings for
13 modification of an order or alteration of a course of action of that type are
14 otherwise provided in the new law.

15 (f) No person is liable for an action taken before the operative date that was
16 proper at the time the action was taken, even though the action would be improper
17 if taken on or after the operative date, and the person has no duty, as a result of the
18 enactment of the new law, to take any step to alter the course of action or its
19 consequences.

20 (g) If the new law does not apply to a matter that occurred before the operative
21 date, the old law continues to govern the matter notwithstanding its repeal or
22 amendment by the new law.

23 (h) If a party shows, and the court determines, that application of a particular
24 provision of the new law or of the old law in the manner required by this section
25 or by the new law would substantially interfere with the effective conduct of the
26 proceedings or the rights of the parties or other interested persons in connection
27 with an event that occurred or circumstance that existed before the operative date,
28 the court may, notwithstanding this section or the new law, apply either the new
29 law or the old law to the extent reasonably necessary to mitigate the substantial
30 interference.

31 **Comment.** Section 25 replaces the second sentence of former Fish and Game Code Section 3.

32 Section 25 is similar to Family Code Section 4 and Probate Code Section 3. It provides general
33 transitional rules applicable to the Fish and Wildlife Code. This section applies both to the act
34 that enacted the Fish and Wildlife Code and to any later act that changes the code, whether the
35 change is effectuated by amendment, addition, or repeal of a provision of the code.

36 The rules stated in this section are general provisions that apply absent a special rule stated in a
37 new law. Special rules may defer or accelerate application of a new law despite the general rules
38 stated in this section. See subdivision (b).

39 The general rule prescribed in subdivision (c) is that a new law applies immediately on its
40 operative date to all matters, including pending proceedings. The general rule is qualified by the
41 exceptions listed in subdivision (d) (contents, execution, and notice of papers and documents are
42 governed by the law applicable when the paper or document was filed), subdivision (e) (orders
43 are governed by the law applicable when the order was made, subject to any applicable
44 modification procedures), and subdivision (f) (acts are governed by the law applicable when the
45 act was done).

1 Where a new law fails to address a matter that occurred before its operative date, subdivision
2 (g) makes clear that old law continues to govern the matter.

3 Because it is impractical to attempt to deal with all the possible transitional problems that may
4 arise in the application of a new law to various circumstances, subdivision (h) provides a safety
5 valve that permits the court to vary the application of the new law where there would otherwise
6 be a substantial impairment of procedure or justice. This provision is intended to apply only in the
7 extreme and unusual case, and is not intended to excuse compliance with the basic transitional
8 provisions simply because of minor inconveniences or minor impacts on expectations or other
9 interests.

10 In addition to governing other substantive provisions, Section 4 also governs itself. It therefore
11 becomes operative on the date the Fish and Wildlife Code becomes operative and applies to
12 provisions enacted and operative before, on, or after that date.

13 **§ 30. Effect of headings**

14 30. Division, part, title, chapter, article, and section headings do not in any
15 manner affect the scope, meaning, or intent of the provisions of this code.

16 **Comment.** Section 30 continues former Section 4 without change, except as indicated below:
17 The following nonsubstantive change was made:

- 18 • The word “title” was added.

19 **§ 35. Reference to specified part of code**

20 35. Unless otherwise expressly stated:

21 (a) “Division” means a division of this code.

22 (b) “Part” means a part of the division in which that term occurs.

23 (c) “Title” means a title of the part in which that term occurs.

24 (d) “Chapter” means a chapter of the division, part, or title, as the case may be,
25 in which that term occurs.

26 (d) “Article” means an article of the chapter in which that term occurs.

27 (e) “Section” means a section of this code.

28 (f) “Subdivision” means a subdivision of the section in which that term occurs.

29 (g) “Paragraph” means a paragraph of the subdivision in which that term occurs.

30 (h) “Subparagraph” means a subparagraph of the paragraph in which that term
31 occurs.

32 **Comment.** Subdivisions (c) and (d) of Section 35 continue former Section 73 without
33 substantive change. The other provisions of Section 35 are new. They are similar to Probate Code
34 Section 8, except that references to “title” have been added.

35 **§ 40. Reference to statute includes amendments and additions**

36 40. Whenever reference is made to any portion of this code or of any other law
37 of this State, the reference applies to all amendments and additions heretofore or
38 hereafter made.

39 **Comment.** Section 40 continues former Section 5 without change.

40 **§ 45. Delegation**

41 45. Whenever a power is granted to, or duty is imposed upon, a public officer,
42 the power may be exercised or the duty may be performed by a deputy of the


1 officer or by a person authorized, pursuant to law, by the officer, unless this code
2 expressly provides otherwise.

3 **Comment.** Section 45 continues former Section 6 without change.

4 **§ 50. Use of English in statements and reports**

5 50. Whenever any statement or report is required to be made, it shall be made in
6 the English language.

7 **Comment.** Section 50 continues former Section 7 without change.

8  **Staff Note.** It is not clear whether Section 7 provides that reports and statements may *only* be
9 published in English. A similar provision, Code of Civil Procedure Section 118, requires
10 publication in English but authorizes unofficial translation of court orders in specified
11 circumstances. The staff invites public comment on whether proposed Section 50 should be
12 revised to add language permitting translation of reports and statements into languages other
13 than English, where appropriate to do so.

14 **§ 55. Tenses**

15 55. The present tense includes the past and future tenses, and the future, the
16 present.

17 **Comment.** Section 55 continues former Section 8 without change.

18 **§ 60. Gender**

19 60. The masculine gender includes the feminine and the neuter.

20 **Comment.** Section 60 continues former Section 9 without change.

21 **§ 65. Number**

22 65. The singular number includes the plural, and the plural, the singular.

23 **Comment.** Section 65 continues former Section 10 without change.

24 **§ 70. Days**

25 70. Whenever in this code the doing of an act between certain dates or from one
26 date to another is allowed or prohibited, the period of time thereby indicated
27 includes both dates specified. The first date specified designates the first day of the
28 period, and the second day specified designates the last day of the period. No
29 period of time specified in this code exceeds one year unless otherwise expressly
30 provided.

31 **Comment.** Section 70 continues former Section 11 without change.

32 **§ 75. Mailed notice**

33 75. Unless otherwise specified by statute, any notice or other written
34 communication required to be sent to any person by this code or regulations
35 adopted pursuant thereto, is sufficient notice if sent by first-class mail to the last
36 address furnished to the department by that person.

1 § 120. “Angling”

2 120. “Angling” means the taking of, or attempting to take, fish by hook and line
3 with the line held in the hand, or by hook and line with the line attached to a pole
4 or rod which is closely attended or held in the hand in a manner that the fish
5 voluntarily takes the bait or lure in its mouth.

6 **Comment.** Section 120 continues former Section 15 without change, except as indicated
7 below:


8 The following nonsubstantive change was made:

- 9 • The word “such” was omitted.

10 § 125. “Aquaculture”

11 125. “Aquaculture” means that form of agriculture devoted to the propagation,
12 cultivation, maintenance, and harvesting of aquatic plants and animals in marine,
13 brackish, and fresh water. “Aquaculture” does not include species of ornamental
14 marine or freshwater plants and animals not utilized for human consumption or
15 bait purposes that are maintained in closed systems for personal, pet industry, or
16 hobby purposes, however, these species continue to be regulated under **Chapter 2**
17 **(commencing with Section 2116) of Division 3.**

18 **Comment.** Section 125 continues former Section 17 without change.

19  **Staff Note:** The cross-reference shown in bold above will need to be corrected, once the
20 referenced material has been renumbered.

21 § 130. “Bag limit”

22 130. “Bag limit” means the maximum limit, in number or amount, of birds,
23 mammals, fish, reptiles, or amphibians that may lawfully be taken by any one
24 person during a specified period of time.

25 **Comment.** Section 130 continues former Section 18 without change.

26 § 135. “Bird”

27 135. “Bird” means any wild bird or any part thereof.

28 **Comment.** Section 135 continues former Section 22 without change.

29 § 140. “Buy”

30 140. “Buy” includes an offer to buy, purchase, barter, exchange, or trade.

31 **Comment.** Section 140 continues former Section 24 without change.

32 § 145. “Chumming”

33 145. “Chumming” means the placing in the water of fish, parts of fish, or other
34 material upon which fish feed, for the purpose of attracting fish to a particular area
35 in order that they may be taken.

36 **Comment.** Section 145 continues former Section 27 without change.

1 § 150. “Closed season”

2 150. “Closed season” means that period of time during which the taking of
3 birds, mammals, fish, or amphibia is prohibited.

4 **Comment.** Section 150 continues former Section 29 without change.

5 § 155. “Commission” and “commissioner”

6 155. “Commission” means the Fish and Game Commission, and
7 “commissioner” means a member of the Fish and Game Commission.

8 **Comment.** Section 155 continues former Section 30 without change.

9 § 160. “County”

10 160. “County” includes city and county.

11 **Comment.** Section 160 continues former Section 32 without change.

12 § 165. “Credible science”

13 165. “Credible science” means the best available scientific information that is
14 not overly prescriptive due to the dynamic nature of science, and includes the
15 evaluation principles of relevance, inclusiveness, objectivity, transparency,
16 timeliness, verification, validation, and peer review of information as appropriate.
17 Credible science also recognizes the need for adaptive management, as scientific
18 knowledge evolves.

19 **Comment.** Section 165 continues former Section 33 without change, except as indicated
20 below:

21 The following nonsubstantive change was made:

- 22 • A cross-reference to former Section 13.5 was omitted as unnecessary.

23 § 170. “Day”

24 170. “Day” means calendar day.

25 **Comment.** Section 170 continues the first clause of former Section 35 without change. See
26 also Section 320 (“week”).

27 § 175. “Department”

28 175. “Department” means the Department of Fish and Wildlife.

29 **Comment.** Section 175 continues former Section 37 without change.

30 § 180. “Director”

31 180. “Director” means the Director of Fish and Wildlife.

32 **Comment.** Section 180 continues former Section 39 without change.

33 § 185. “District”

34 185. “District” means fish and wildlife district.

35 **Comment.** Section 185 continues former Section 41 without change, except as indicated
36 below:

37 The following nonsubstantive change was made:

- 1 • The word “game” was replaced with “wildlife.”

2 **§ 190. “Ecosystem-based management”**

3 190. “Ecosystem-based management” means an environmental management
4 approach relying on credible science that recognizes the full array of interactions
5 within an ecosystem, including humans, rather than considering single issues,
6 species, or ecosystem services in isolation.

7 **Comment.** Section 190 continues former Section 43 without change, except as indicated
8 below:

9 The following nonsubstantive change was made:

- 10 • A cross-reference to former Section 33 was omitted as unnecessary.

11 **§ 195. “Fish”**

12 195. “Fish” means wild fish, mollusks, crustaceans, invertebrates, or
13 amphibians, including any part, spawn, or ova thereof.

14 **Comment.** Section 195 continues former Section 45 without change.

15 **§ 200. “Fish Commission Fund,” “Game Preservation Fund”**

16 200. Wherever the term “Fish Commission Fund” or “Game Preservation Fund”
17 appears in any law, it means “Fish and Game Preservation Fund.”

18 **Comment.** Section 200 continues former Section 12 without change.

19 **§ 205. “Guide boat”**


20 205. “Guide boat” means a boat or vessel under 25 feet in length, which is used
21 by a guide, who is licensed under **Chapter 5 (commencing with Section 2535) of**
22 **Division 3**, in inland waters for any of the following purposes:

23 (1) For the business of packing or guiding.

24 (2) For compensation, to assist another person in taking or attempting to take
25 any fish or amphibian.

26 (3) For compensation, to assist another person in locating any bird or mammal.

27 **Comment.** Section 205 continues former Section 46 without change.

28  **Staff Note:** The cross-reference shown in bold above will need to be corrected, once the
29 referenced material has been renumbered.

30 **§ 210. “Hook” and related terms**

31 210. “Hook” or “fishhook” means an implement to catch or hold fish or
32 amphibia. “Single hook” means any hook with one point and with or without a
33 barb; “double hook” means any hook with two points and with or without barbs;
34 “treble or triple hook” means any hook with three points and with or without
35 barbs. “Snag” or “gaff” hooks are hooks with or without handles used to take fish
36 where the fish does not take the hook voluntarily in its mouth.

37 **Comment.** Section 210 continues former Section 48 without change, except as indicated
38 below:

39 The following nonsubstantive change was made:

- 1 • The phrase “in such manner that” was replaced with “where.”

2 **§ 215. “Kelp”**

3 215. “Kelp” means kelp or other marine aquatic plants and the seeds thereof.

4 **Comment.** Section 215 continues former Section 51 without change.

5 **§ 220. “Mammal”**

6 220. “Mammal” means any wild or feral mammal or any part thereof, but not
7 any wild, feral, or undomesticated burro.

8 **Comment.** Section 220 continues former Section 54 without change.

9 **§ 225. “Marine finfish aquaculture”**

10 225. “Marine finfish aquaculture” means the propagation, cultivation, or
11 maintenance of finfish species in the waters of the Pacific Ocean that are regulated
12 by this state.

13 **Comment.** Section 225 continues former Section 54.5 without change.

14 **§ 230. “Mile”**

15 230. “Mile” means either a statute mile (5,280 feet) or a nautical mile (6,077
16 feet) depending on the application. Statute miles shall be the unit of measurement
17 for all land masses, rivers, streams, creeks, and inland bodies of water. Nautical
18 miles shall be the unit of measurement for all marine waters.

19 **Comment.** Section 230 continues former Section 55 without change.

20 **§ 235. “Net”**

21 235. “Net” means any gear made of any kind of twine, thread, string, rope, wire,
22 wood, or other materials used for the gilling, entangling, trapping, or impounding
23 of fish.

24 **Comment.** Section 235 continues former Section 56 without change.

25 **§ 240. “Nonresident”**

26 240. “Nonresident” means any person who has not resided continuously in the
27 State of California for six months immediately prior to the date of application for a
28 license or permit.

29 **Comment.** Section 240 continues former Section 57 without change, except as indicated
30 below:

31 The following nonsubstantive change was made:

- 32 • The word “his” was omitted before the word “application,” for gender neutrality.

33 **§ 245. “Oath”**

34 245. “Oath” includes affirmation.

35 **Comment.** Section 245 continues former Section 60 without change.

1 § 250. “Ocean ranching”

2 250. “Ocean ranching” means aquaculture where juvenile anadromous fish are
3 reared and released into state waters to grow and return to an aquaculture facility
4 to be harvested commercially.

5 **Comment.** Section 250 continues former Section 61 without change.

6 § 255. “Open season” and “season”

7 255. “Open season” means that period of time during which the taking of birds,
8 mammals, fish, reptiles, or amphibians is allowed as prescribed in this code and
9 regulations adopted by the commission. If used to define the period of time during
10 which take is allowed “season” means “open season.”

11 **Comment.** Section 255 continues former Section 62 without change.

12 § 260. “Person”

13 260. “Person” means any natural person or any partnership, corporation, limited
14 liability company, trust, or other type of association.

15 **Comment.** Section 260 continues former Section 67 without change.

16 § 265. “Possession limit”

17 265. “Possession limit” means the maximum, in number or amount, of birds,
18 mammals, fish, reptiles, or amphibians that may be lawfully possessed by one
19 person.

20 **Comment.** Section 265 continues former Section 19 without change.

21 § 270. “Purchase”

22 270. “Purchase” means “buy” as defined in Section 140.

23 **Comment.** Section 270 continues former Section 68 without change, except as indicated
24 below:

25 The following nonsubstantive change was made:

- 26 • A cross-reference to former Section 24 was updated.

27 § 275. “Recycled water” or “reclaimed water”

28 275. “Recycled water” or “reclaimed water” has the same meaning as recycled
29 water as defined in subdivision (n) of Section 13050 of the Water Code.

30 **Comment.** Section 275 continues former Section 89 without change, except as indicated
31 below:

32 The following nonsubstantive change was made:

- 33 • The phrase “for the purposes of this code” was omitted.

34 § 280. “Resident”

35 280. “Resident” means any person who has resided continuously in the State of
36 California for six months or more immediately prior to the date of application for a
37 license or permit, any person on active military duty with the Armed Forces of the

1 United States or auxiliary branch thereof, or any person enrolled in the Job Corps
2 established pursuant to Section 2883 of Title 29 of the United States Code.

3 **Comment.** Section 280 continues former Section 70 without change, except as indicated
4 below:

5 The following nonsubstantive change was made:

- 6 • The word “his” was omitted before the word “application,” for gender neutrality.

7 **§ 285. “Sell”**

8 285. “Sell” includes offer or possess for sale, barter, exchange, or trade.

9 **Comment.** Section 285 continues former Section 75 without change.

10 **§ 290. “Signature” or “subscription”**

11 290. “Signature” or “subscription” includes mark when the signer or subscriber
12 cannot write, the signer’s or subscriber’s name being written near the mark by a
13 witness who writes his own name near the signer’s or subscriber’s name; but a
14 signature or subscription by mark can be acknowledged or can serve as a signature
15 or subscription to a sworn statement only when two witnesses also sign their own
16 names.

17 **Comment.** Section 290 continues former Section 81 without change, except as indicated
18 below:

19 The following nonsubstantive change was made:

- 20 • The word “such” was replaced with “the.”

21 **§ 295. “Slurp gun”**

22 295. “Slurp gun” means a self-contained, hand-held device used to capture fish
23 by rapidly drawing water containing fish into a closed chamber.

24 **Comment.** Section 295 continues former Section 82 without change.

25 **§ 300. “State”**

26 300. “State” means the State of California, unless applied to the different parts
27 of the United States. In the latter case, it includes the District of Columbia and the
28 territories.

29 **Comment.** Section 300 continues former Section 83 without change.

30 **§ 305. “Take”**

31 305. “Take” means hunt, pursue, catch, capture, or kill, or attempt to hunt,
32 pursue, catch, capture, or kill.

33 **Comment.** Section 305 continues former Section 86 without change.

34 **§ 310. “Transport”**

35 310. “Transport” includes offer or receive for transportation.

36 **Comment.** Section 310 continues former Section 88 without change.

1 **§ 315. “Waters of the state,” “waters of this state,” and “state waters”**

2 315. “Waters of the state,” “waters of this state,” and “state waters” have the
3 same meaning as “waters of the state” as defined in subdivision (e) of Section
4 13050 of the Water Code.

5 **Comment.** Section 315 continues former Section 89.1 without change.

6 **§ 320. “Week”**

7 320. “Week” means calendar week.

8 **Comment.** Section 320 continues the second clause of former Section 35 without change. See
9 also Section 170 (“day”).

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Fish and Game Code and the corresponding provision of the proposed law (if any).

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1	10	37	175
2	100	39	180
3 (1st sent.)	20(a)	41	185
3 (2d sent.)	omitted, but see 25	43	190
4	30	45	195
5	40	46	205
6	45	48	210
7	50	51	215
8	55	54	220
9	60	54.5	225
10	65	55	230
11	70	56	235
12	200	57	240
13	75	60	245
13.5	105	61	250
14	115	62	255
15	120	64	85
16	110	67	260
17	125	68	270
18	130	70	280
19	265	73	35(c)-(d)
22	135	75	285
24	140	79	80
27	145	81	290
29	150	82	295
30	155	83	300
32	160	86	305
33	165	88	310
35 (1st cl.)	170	89	275
35 (2d cl.)	320	89.1	315