

Memorandum 2013-49

**Fish and Game Law: Public Comment on
Proposed Part 4 of Division 2 (Licensing)**

Memorandum 2013-32¹ presented a draft of Part 4 of Division 2 of the proposed Fish and Wildlife Code, which was entitled “General License Provisions.”

On August 1, 2013, the Commission received a letter from Kevin Hunting, Chief Deputy Director of the Department of Fish and Wildlife (the “Department”), commenting on Memorandum 2013-32. **The staff greatly appreciates the Department’s continued assistance.**

The issues raised in the letter are discussed below.

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

LICENSE AGENT: METHODS OF OPERATION

Under existing law, a private person or entity (e.g., a sporting good store, sport fishing charter company, hunting guide, etc.) can be authorized to sell Department licenses directly to the public.² The license agent receives a small “handling fee” on each transaction as compensation.³

There are three general methods by which a license agent may operate: (1) consignment, (2) prepayment, or (3) use of the Automated License Data System (“ALDS”).

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See generally Sections 1055-1056.

3. *Id.*

Under the consignment system, a license agent is issued licenses for sale to the public, without any prepayment of the cost of the license. The license agent is eventually responsible for remitting payment for any licenses that are sold.⁴

Under the prepayment system, a license agent must pay the cost of licenses in advance, before being provided with the physical licenses for sale to the public.⁵

The ALDS is an online license sale system. When a license is sold, the licensing agent keys the sale into the ALDS system. The license is then printed, on the license agent's premises, and provided to the purchaser. Sales are recorded electronically. Payment is made by periodic electronic transfer from an account established by the license agent for that purpose.⁶

As previously discussed, the staff had received informal input suggesting that the first two methods of payment are mostly obsolete, with only the ALDS system in continuing use.⁷ For that reason, the staff asked for comment on whether there was any need to continue the provisions relating to prepayment and consignment.

In response, the Department writes:

While virtually all license sales are now done through the automated ALDS system, there may be isolated instances in which consignment or prepayment modes of sale could still be used in the future. Given the fact that the ALDS system is still relatively new, the Department would prefer to maintain the non-ALDS statutory provisions until we have more experience with the automated system.⁸

The staff is persuaded that existing law on the consignment and prepayment modes of license agent sales should be retained.

LICENSE APPLICATION FEE

Existing Section 1050(f) provides as follows:

Whenever this code provides for a license, tag, permit, reservation, or other entitlement, the commission or department, as applicable, may establish a nonrefundable application fee, not to exceed seven dollars and fifty cents (\$7.50) sufficient to pay the department's costs for issuing the license, tag, permit, reservation,

4. *Id.*

5. *Id.*

6. *Id.*

7. Memorandum 2013-32, p. 4.

8. See Exhibit p. 1.

or other entitlement and may adjust the application fee in accordance with Section 713.

In the draft attached to Memorandum 2013-32, a note described an apparent ambiguity in that language: “Under the existing provision, it is not clear how the two limits on the fee amount operate.”⁹

Proposed Section 2215 would restate the provision as follows:

2215 (a) Whenever this code provides for a license, the commission or department, as applicable, may establish a nonrefundable application fee, not to exceed the lesser of (1) seven dollars and fifty cents (\$7.50) or (2) an amount sufficient to pay the department’s costs for issuing the license.

(b) The commission or department, as applicable, may adjust the application fee in accordance with Section 2210.¹⁰

As can be seen, the proposed language would resolve the ambiguity by providing that the fee must be the *lesser* of \$7.50 or the Department’s cost to process the license.

The Department opposes the proposed restatement of Section 1050(f):

The Department recommends maintaining the existing language of Fish and Game Code Section 1050(f), as the proposed restatement could be interpreted as creating a change to the substantive effect of the provision.

It is true that codifying one possible interpretation of the ambiguous language would foreclose other possible interpretations, which might be problematic.

What’s more, the provision is already the subject of a Department regulation, providing that:

All licenses, tags, permits, reservations or other entitlements purchased via ALDS shall be subject to a three percent nonrefundable application fee, not to exceed seven dollars and fifty cents (\$7.50) per item, to pay the Department's costs for issuing that license, tag, permit, reservation or other entitlement.¹¹

If the statute were revised substantively, the Department might need to go to the trouble and expense of amending its regulation.

Because the Department believes it would be preferable to preserve the existing statutory language, and revising that language might entail expenses to

9. Memorandum 2013-12, Attachment p. 10 (emphasis in original).

10. *Id.*

11. 14 Cal. Code Regs. § 700.4(e).

conform the existing regulation, the staff is inclined to do as the Department suggests. **Does the Commission agree that the existing language should be preserved (rather than being restated)?**

PREPAYMENT AND PRE-DELIVERY OF ALDS LICENSES

As the staff understands it, the ALDS system is a print-on-demand system. When a license sale is made, a computer is used to print the license on the spot. Based on that understanding, the staff assumed that there would never be a situation in which an ALDS license agent would need to pay in advance for the delivery of a block of licenses (as is common for prepayment license agents). Nor would there be any situation where an ALDS agent would have a block of unsold licenses to return at the end of the year (as is common for prepayment and consignment agents).

Despite that assumption, Section 1055.1(c) — which governs ALDS license agents — provides rules for both of those possibilities. That provision would be continued in proposed Section 2425:

2425. (a) The department may provide licenses to authorized license agents and shall collect, prior to delivery, an amount equal to the fees for all licenses, permits, reservations, tags and other entitlements provided.

(b) Any licenses provided pursuant to this subdivision that remain unissued at the end of the license year may be returned to the department for refund or credit, or a combination thereof, within six months of the item expiration date. No credit may be allowed after six months following the last day of the license year.

Because the section governs circumstances that seem unlikely to ever arise under the ALDS system, a Staff Note following proposed Section 2425 asked whether the section should be deleted as unnecessary.¹²

The Department recommends against doing so. It explains that “there are some very limited instances in which licenses are pre-printed or paid for prior to delivery.”¹³

This new information refutes the staff’s assumption that the provision would never have real world application. **For that reason, the staff recommends against deleting the provision.**

12. Memorandum 2013-32, Attachment pp. 16-17.

13. See Exhibit p. 3.

DEPARTMENT AGREEMENT WITH PROPOSED CHANGES

The remainder of Mr. Hunting's letter expresses agreement with Commission suggestions to make minor improvements to existing language. Each of the proposed changes is discussed below. **Because these are changes that the Commission itself has proposed, the staff does not intend to discuss them orally at the upcoming meeting. The staff will presume that these changes are acceptable and should be made.** However, if any Commissioner or member of the public has concerns about any of the proposed changes, they can be put on the table for discussion.

Form of License

Proposed Section 2005 would restate existing Section 1050(b), to improve its clarity, without changing its substantive effect.

Existing Section 1050(b) provides:

The commission shall determine the form of all licenses, permits, tags, reservations, and other entitlements and the method of carrying and displaying all licenses, and may require and prescribe the form of applications therefor and the form of any contrivance to be used in connection therewith, except for those programs where the department has fee-setting authority, in which case the department shall retain that authority.

Proposed Section 2005 would read as follows:

2005. (a) Except as provided in subdivision (b), the commission shall determine the form of all of the following:

- (1) A license.
- (2) The method of carrying and displaying a license.
- (3) The application for a license.
- (4) Any contrivance to be used in connection with a license.

(b) For programs where the department has fee-setting authority, the department has the authority described in subdivision (a).

The Department supports the proposed restatement.¹⁴ **Unless the Commission directs otherwise, the staff will use the restated language in the proposed law.**

14. See Exhibit p. 1.

Terms and Conditions of License Issuance

Proposed Section 2075 would restate existing Section 1050(c), to improve its clarity, without changing its substantive effect.

Existing Section 1050(c) provides:

Whenever this code provides for a permit, license, tag, reservation, application, or other entitlement, the commission, in accordance with the provision, shall prescribe the terms and conditions under which the permit, license, tag, reservation, application, or other entitlement shall be issued, except for those programs where the department has fee-setting authority, in which case the department shall retain that authority. The department shall issue the permit, license, tag, reservation, application, or other entitlement in accordance therewith and with the applicable provisions of law.

Proposed Section 2055 would read as follows:

2055. (a) Except as provided in subdivision (b), the commission shall prescribe the terms and conditions under which a license or application is issued.

(b) For programs where the department has fee-setting authority, the department has the authority described in subdivision (a).

(c) The department shall issue a license or application in accordance with the terms and conditions prescribed pursuant to this section and with the applicable provisions of law.

The Department supports the proposed restatement.¹⁵ **Unless the Commission directs otherwise, the staff will use the restated language in the proposed law.**

Additionally, a note following proposed Section 2055 asks whether proposed Section 2055(c) should be deleted as superfluous (because its content is already addressed in other provisions).¹⁶ The Department agrees that the provision is superfluous and can be deleted.¹⁷ **Unless the Commission directs otherwise, the staff will delete subdivision (c) from proposed Section 2055.**

Limitation on Number of Licenses Issued to One Person

Proposed Section 2075(b)-(c) would restate Section 1053.1(a)(2)-(3) to improve the clarity of those provisions, without changing their substantive effect.

Existing Section 1053.1(a)(2)-(3) provides:

15. *Id.*

16. Memorandum 2013-32, Attachment p. 3.

17. See Exhibit p. 1.

(2) The loss or destruction of an unexpired license, tag, permit, reservation, or other entitlement, except a stamp or endorsement, as certified by the applicant's signed affidavit and proof, as determined by the department, that the original license, tag, permit, reservation, or other entitlement was issued, and payment of a base fee of five dollars (\$5). The base fee shall be adjusted annually pursuant to Section 713, not to exceed the fee for the original entitlement, as follows:

(A) The adjustment shall apply to the hunting license years commencing on or after July 1, 1996.

(B) The adjustment shall apply to the fishing license years commencing on or after January 1, 1996.

(3) The loss or destruction of a stamp or endorsement imprinted on a base license and payment of a base fee of three dollars (\$3) for each stamp or endorsement replaced on any base license document, adjusted annually pursuant to Section 713, not to exceed the fee for the original entitlement. The base fee in this paragraph shall apply to the 2011 license year.

Proposed Section 2075(b) and (c) would read as follows:

2075. A person shall not obtain more than one license of the same class, or more than the number of tags authorized by statute or regulation for the same license year, except under one of the following conditions:

...

(b) The loss or destruction of an unexpired license, except a stamp or endorsement, provided that all of the following requirements are met:

(1) The applicant certifies the loss or destruction of the license by signed affidavit.

(2) There is proof, as determined by the department, that the original license was issued.

(3) The applicant pays a base fee of five dollars (\$5). The base fee shall be adjusted annually pursuant to Section 2210, not to exceed the fee for the original entitlement. The adjustment shall apply to the hunting license years commencing on or after July 1, 1996, and the fishing license years commencing on or after January 1, 1996.

(c) The loss or destruction of a stamp or endorsement imprinted on a base license that was issued through the Automated License Data System, on payment of a base fee of three dollars (\$3) for each stamp or endorsement replaced on any base license document. The base fee shall be adjusted annually pursuant to Section 2210, not to exceed the fee for the original entitlement. The base fee shall apply to the 2011 license year.

The Department supports the proposed restatement.¹⁸ **Unless the Commission directs otherwise, the staff will use the restated language in the proposed law.**

Hunter Education

Proposed Section 2080 would continue former Section 1053.5, except that it would not continue a cross-reference that appears to be erroneous. The Staff Note following proposed Section 2080 explains:

By its terms, Section 1053.5 governs application for a hunting license “pursuant to subdivision (a) of Section 1053.” That cross-reference appears to be erroneous. Section 1053(a) limits the number of licenses that a person may be issued in a year. It is not authority for granting hunting licenses.¹⁹

The Department agrees that the cross-reference is erroneous and could be deleted without causing any substantive problems.²⁰ **Unless the Commission directs otherwise, the staff will omit the cross-reference from the proposed law.**

Commission Authority to Set or Change License Fees

Proposed Section 2200 would restate Section 1050(d) to improve its clarity, without changing its substantive effect.

Existing Section 1050(d) provides:

Except for fees set by the department pursuant to subdivision (e), whenever this code does not specify whether a fee is to be collected, or does not specify the amount of a fee to be collected, or does not expressly prohibit the adjustment of statutorily imposed fees by the commission by reference to this section for the issuance of any license, tag, permit, application, reservation, or other entitlement, the commission may establish a fee or the amount thereof by regulation. The commission may also provide for the change in the amount of the fee in accordance with Section 713. Fees established by the commission shall be in an amount sufficient to recover all reasonable administrative and implementation costs of the department and commission relating to the program with regard to which the fee is paid. The commission may establish a fee structure that provides for the phasing in of new fees leading up to full cost recovery for the department and commission, provided that full cost recovery is achieved within five years of the establishment of the fee.

18. See Exhibit p. 2.

19. Memorandum 2013-32, Attachment p. 5.

20. See Exhibit p. 2.

Proposed Section 2200 would read as follows:

2200. (a) In any of the following circumstances, the commission may, by regulation, establish or change the amount of a fee for an application or for the issuance of a license:

(1) This code does not specify whether the fee is to be collected.

(2) This code does not specify the amount of the fee.

(3) This code does not prohibit, by express reference to this section, the commission from adjusting a statutorily imposed fee.

(b) Fees established by the commission shall be in an amount sufficient to recover all reasonable administrative and implementation costs of the department and commission relating to the program with regard to which the fee is paid. The commission may establish a fee structure that provides for the phasing in of new fees leading up to full cost recovery for the department and commission, provided that full cost recovery is achieved within five years of the establishment of the fee.

(c) The commission may change the amount of a fee in accordance with Section 2210.

(d) This section does not apply to fees set by the department pursuant to Section 2205.

The Department supports the proposed restatement.²¹ **Unless the Commission directs otherwise, the staff will use the restated language in the proposed law.**

Department Authority to Set or Change Fees

Proposed Section 2205 would restate the substance of former Section 1050(e).

Existing Section 1050(d) provides:

The department may establish fees and may adjust statutorily imposed fees by regulation for the filings, permits, determinations, or other department actions described in Section 711.4, 1002, or 1609. The department also may provide for the change in the amount of the fee in accordance with Section 713. Fees established by the department shall be in an amount sufficient to recover all reasonable administrative and implementation costs of the department relating to the program with regard to which the fee is paid. The department may establish a fee structure that provides for the phasing in of new fees leading up to full cost recovery for the department, provided that full cost recovery is achieved within five years of the establishment of the fee.

Proposed Section 2205 would read as follows:

21. *Id.*

2205. (a) The department may, by regulation, establish fees and adjust statutorily imposed fees for the filings, permits, determinations, or other department actions described in Sections 711.4, 1002, and 1609.

(b) The department may change the amount of a fee in accordance with Section 2210.

(c) Fees established by the department shall be in an amount sufficient to recover all reasonable administrative and implementation costs of the department relating to the program with regard to which the fee is paid. The department may establish a fee structure that provides for the phasing in of new fees leading up to full cost recovery for the department, provided that full cost recovery is achieved within five years of the establishment of the fee.

The Department supports the proposed restatement.²² **Unless the Commission directs otherwise, the staff will use the restated language in the proposed law.**

Additionally, a Staff Note following proposed Section 2205 asks whether the provision should be relocated.²³ By its terms, it provides authority to set *any* fee for services, not just a license fee. Therefore, it might be more appropriate to locate the section with other general financial provisions, rather than in a part of the code that governs licenses only.

The Department agrees that the provision addresses fees other than license fees and “could logically be moved elsewhere in the Code.”²⁴ **Unless the Commission directs otherwise, the staff will move proposed Section 2205 to the part of the code relating to financial matters generally.**

Wildlife Area Passes and Native Species Stamps

Existing Section 1055.3 authorizes license agent sales of “wildlife area passes” and “native species stamps.” It authorizes the license agent to collect a handling fee “pursuant to subdivision (b) of Section 1055.” However, the referenced provision is expressly inapplicable to ALDS license sales. This suggests that a handling fee is not authorized for ALDS sales.

A Staff Note following proposed Section 2310 explains the issue and suggests that the implied ALDS limitation was probably not intended. For that reason, the

22. *Id.*

23. Memorandum 2013-32, Attachment pp. 8-9.

24. See Exhibit p. 2.

limiting language was not continued in proposed Section 2310. The Staff Note asked for comment on that approach.²⁵

The Department agrees that “the implied limitation is likely unintentional” and that proposed Section 2310 would resolve the matter.²⁶ **Unless the Commission directs otherwise, the staff will use the current text of proposed Section 2205, which omits the limiting reference, in the proposed law.**

Limitation on Delivery of Licenses

Proposed Section 2315 would continue former Section 1055(e). It prohibits the delivery of licenses to license agents who are not in compliance with the law:

2315. (a) Licenses may only be provided to authorized license agents that are in compliance with all laws, regulations, and policies governing the sale and reporting of licenses, permits, reservations, tags, and other entitlements.

(b) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

A Staff Note following proposed Section 2315 questioned why the section is inapplicable to ALDS sales. The note asked whether the section should be generalized to apply to all license agents, including ALDS agents.²⁷

The Department agrees that the provision should be generalized so that it applies to all license agents.²⁸ **Unless the Commission directs otherwise, the staff will delete subdivision (b) from proposed Section 2315.**

Remittance by License Agent

Section 2365 would continue former Section 1055.5(a), (b) & (d). However, in doing so, it would correct a number of very technical reference errors (involving references to provisions that are otherwise inapplicable).

A note following proposed Section 2365 identifies the errors and asks for confirmation that they were correctly resolved in the proposed law:

(1) Under Section 1055(d), a license agent who pre-pays for licenses is not governed by Section 1055.5(a) or (d). By its own terms, Section 1055.5 does not apply to a license agent who uses ALDS. See Section 1055.5(e). Consequently, it appears to be appropriate to limit the application of Section 1055.5(a) and (d) to

25. Memorandum 2013-32, Attachment p. 13.

26. See Exhibit p. 2.

27. Memorandum 2013-32, Attachment p. 13.

28. See Exhibit p. 2.

consignment sales, as is done in this draft. See proposed Section 2370.

(2) There is nothing that expressly exempts prepayment sales from subdivision (b) of Section 1055.5. However, Section 1055.5(b) appears to provide an exception to Section 1055.5(a). Given that prepayment sales are exempt from 1055.5(a), it would seem to follow that such sales are not governed by 1055.5(b). That is the approach taken in this draft. See proposed Section 2370.

The staff invites public comment on whether that is a correct approach.

The Department agrees with the changes proposed by the Commission to address the reference errors.²⁹ **Unless the Commission directs otherwise, the staff will include those changes in the proposed law.**

Respectfully submitted,

Brian Hebert
Executive Director

29. See Exhibit p. 2.



VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

August 1, 2013

Ms. Xochitl Carrion, Chairperson
California Law Revision Commission
c/o Mr. Brian Hebert, Executive Director
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Subject: Comments on Memorandum 2013-32

Dear Ms. Carrion:

Regarding CLRC memorandum 2013-32, the Department of Fish and Wildlife has the following comments at this time:

Division 2, Part 4: General Licensing Provisions

- While virtually all license sales are now done through the automated ALDS system, there may be isolated instances in which consignment or prepayment modes of sale could still be used in the future. Given the fact that the ALDS system is still relatively new, the Department would prefer to maintain the non-ALDS statutory provisions until we have more experience with the automated system.

Chapter 1. Licenses Generally, Article 1. Form and Validity

- **§2005. Form:** Department staff agrees that the CLRC proposed restatement of Fish and Game Code section 1050(b) improves the clarity of the section without making a substantive change.

Chapter 1. Licenses Generally, Article 2. Issuance

- **§2055. Terms and conditions of issuance:** Department staff agrees that the CLRC proposed restatement of Fish and Game Code section 1050(c) improves the clarity of the section without making a substantive change.
- **§2055(c):** Department staff agrees that proposed section 2055(c) is superfluous and can be deleted.

EX 1

Conserving California's Wildlife Since 1870

- **§2075. Limitation on number of licenses issued to one person:** Department staff agrees that the CLRC staff proposals restating existing Fish and Game Code sections 1053 and 1053.1 increase clarity, but do not make substantive changes to the meaning of the provisions.
- **§2080. Hunter Education:** Department staff agrees that the existing cross-reference to section 1053 is erroneous and that deletion of the cross-reference would not cause any substantive problems.

Chapter 1. Licenses Generally, Article 3. Fees

- **§2200. Commission authority to set or change license fees:** Department staff agrees that proposed section 2200 is restates existing section 1050(d) in order to improve clarity, but does not change the substantive effect of the section.
- **§2205. Department authority to set or change fees:** Department staff agrees that this section deals with fees unrelated to licenses and, therefore, the section could logically be moved elsewhere in the Code. Department staff also agrees that the proposed restatement would not cause a substantive change in the meaning of the provision.
- **§2215. Application fee:** The Department recommends maintaining the existing language of Fish and Game Code section 1050(f), as the proposed restatement could be interpreted as creating a change to the substantive effect of the provision.

Chapter 2. License Agents, Article 1. Authorized License Agent

- **§2310. Wildlife area passes and native species stamps:** Department staff agrees that the implied limitation is likely unintentional and that the CLRC staff restatement resolves the limitation.
- **§2315. Limitation on delivery:** Department staff agrees that the limitation contained in existing section 1055(e) should be generalized so that it applies to all license agents.

Chapter 2. License Agents, Article 2. Consignment

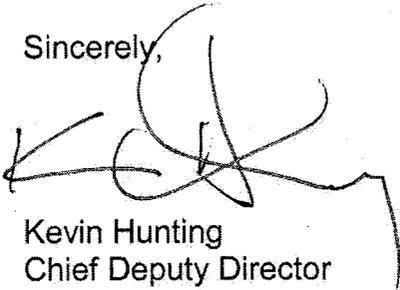
- **§2365. Remittance:** Department staff agrees with the CLRC staff proposed restatement that limits the application of Section 1055.5(a) and (d) to consignment sales and that exempts prepayment sales from subdivision (b) of Section 1055.5.

Chapter 2. License Agents, Article 4. Automated License Data System

- **§2425. Provision of licenses:** Department staff recommends maintaining the existing language of 1055.1 as there are some very limited instances in which licenses are pre-printed or paid for prior to delivery.

Thank you for your continued work on the Fish and Game Code proposed revisions and please contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Hunting', written over a large, faint circular stamp or watermark.

Kevin Hunting
Chief Deputy Director