

Memorandum 2014-8

**Fish and Game Law: Proposed Division 5
(Hunting, Fishing, and Other Public Use)**

The Commission has provisionally decided to divide the program-specific content of the proposed Fish and Wildlife Code along these lines:

- Division 5. Hunting, Fishing, and Other Public Use
- Division 6. Biodiversity
- Division 7. Management of Public Lands and Facilities
- Division 8. Pollution Prevention and Response
- Division 9. Miscellaneous Provisions

See Minutes (Dec. 2013), p. 14.¹

This memorandum presents a staff draft of the first part of Division 5, Part 1 (“General Provisions”).

The staff has taken a fairly conservative approach in preparing the attached draft. Much of the language used in the draft is drawn verbatim from existing law. Where minor revisions to a provision have been proposed (typically to conform to standard legislative drafting practices, update cross-references, or correct clear defects), the revisions are individually described in the provision’s corresponding Comment (which will be included in any final recommendation). Courts have generally treated Commission Comments as evidence of legislative intent, with regard to legislation enacted on the Commission’s recommendation.

In a few instances, the staff has proposed to significantly restate an existing provision, in order to improve its clarity. Where that has been done, a “Staff Note” following the restated provision sets out the existing language for comparison.

The attached draft also includes numerous Staff Notes that identify issues that will require future attention, or solicit public comment on specific issues.

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.

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.

CONTENT OF PROPOSED DIVISION 5, PART 1

Proposed Division 5 will contain the provisions of the existing Fish and Game Code that primarily relate to hunting, fishing, or other public uses of land or wildlife. Part 1 contains general provisions that govern both hunting and fishing. It is organized as follows:

- Title 1. Prohibitions and Remedies
- Title 2. Special Seasons and Possession Limits
- Title 3. Hunting and Fishing Guides
- Title 4. Lifetime Licenses

Provisions that are specific to one type of use (e.g., hunting, but not fishing) are not included in Part 1. They will be included in later parts of the division. Provisions have also been omitted from Part 1 if they seemed to be primarily grounded in concerns other than *use* of wildlife and wild lands. For example, a provision about protecting arid habitats will be included with other habitat protection provisions,² even though it also limits hunting and fishing in certain areas. Similarly, a provision relating to the take of protected species³ will be grouped with other provisions on protected species.

In addition, there are two provisions relating to firearms that the staff believes might be better located in the Penal Code. Those provisions are discussed further below.

FIREARMS PROVISIONS

Existing Sections 2006 and 2007 regulate firearms in ways that do not appear to be limited to hunting:

- 2006. (a) It is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public.

2. Section 308.5.
3. Section 12159.5.

(b) A rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine.

(c) The provisions of this section shall not apply to peace officers or members of the Armed Forces of this state or the United States, while on duty or going to or returning from duty.

2007. It is unlawful to set, cause to be set, or placed any trap gun.

A “trap gun” is a firearm loaded with other than blank cartridges and connected with a string or other contrivance contact with which will cause the firearm to be discharged.

It is the staff’s view that these two provisions should be relocated to the Penal Code, near provisions addressing similar subjects. Otherwise, a person reviewing the Penal Code provisions on firearm transportation and use could be unaware of these additional criminal prohibitions. The staff invites public comment on whether there is any reason to leave these provisions in the Fish and Wildlife Code.

If the Commission decides to move the provisions, the staff will prepare implementing language in a future memorandum.

GENERAL ISSUES

In preparing the attached draft, the staff encountered a few recurring issues that are worth discussing generally. To the extent possible, it would be helpful to develop a default rule for dealing with these issues, rather than tackling them piecemeal.

Reference to Animal Parts

A number of provisions in Part 1 govern specified types of animals (e.g., birds, mammals, fish, reptiles, or amphibians). Some expressly govern *parts* of the regulated type of animal.⁴ Others do not.⁵

4. See, e.g., Section 2000 (second sentence) (proposed Section 5000(b)), Section 2002 (proposed Section 5010), Section 12012(a) (proposed Section 5100(a)), Section 12159 (proposed Section 5400), Section 12162 (proposed Section 5405), Section 12160 (proposed Section 5415), Section 12161 (proposed Section 5420), Section 12163 (proposed Section 5425).

5. See, e.g., Section 2000 (first sentence) (proposed Section 5000(a)), Section 2000.5 (proposed Section 5005), Section 2001 (proposed Section 5015), Section 2015 (proposed Section 5140), Section 12013 (proposed Section 5105).

The staff was not able to find any clear policy that would justify this difference in treatment. For example, there is a provision that makes it a crime to possess animals *or animal parts* in violation of any provision of the code.⁶ But the provision prohibiting possession out of season or in excess of a bag limit does *not* expressly apply to animal parts.⁷ The staff sees no obvious reason for that difference. As a matter of policy, it would seem that season limits and bag limits should apply to both whole animals and parts of animals.

The situation is complicated by the fact that the existing definitions of “bird,” “mammal,” and “fish” expressly include parts of the specified types of animals.⁸ This means that it is not necessary to include an express reference to animal parts in connection with those kinds of animals. However, there is no similar definition of “amphibian” or “reptile.” In order for a statute regulating amphibians and reptiles to apply to amphibian and reptile parts, it would need to state that application expressly.⁹

At least with respect to birds, mammals, and fish, it would seem that the code is generally intended to regulate whole animals and parts of animals in the same way.¹⁰ That makes sense if the purpose of the law is to limit how many animals may be taken during various seasons. In that regard, possession of a whole mountain lion is no different from possession of the lion’s head. In either case, the lion was taken. If that is correct, wouldn’t the same logic apply to amphibians and reptiles?

If so, then it might be appropriate to establish a broad general rule along these lines:

§ 95. Animal parts

95. Unless otherwise provided, any provision of this code that applies to a whole animal also applies to a part of the animal.

Comment. Section 95 is new.

If such a provision were added, numerous statutory references to “parts thereof” could also be deleted.

The staff invites public comment on the merits of this idea.

6. Section 2002 (proposed Section 5010).

7. Section 2001 (proposed Section 5015).

8. See Section 22 (proposed Section 135) (“bird”), Section 45 (proposed Section 195) (“fish”), Section 54 (proposed Section 220) (“mammal”).

9. Technically, the definition of “fish” includes amphibians, but it isn’t clear that the term is consistently used with that meaning. See discussion in Memorandum 2013-12, p. 5.

10. The staff is aware that some statutes specially regulate certain animal parts. E.g., Section 4758 (sale or purchase of bear parts).

Terminology Describing a Regulation

Several of the provisions in Part 1 refer to regulations. Most refer to a regulation “adopted pursuant to” the code,¹¹ while others refer to a regulation “made pursuant to” the code,¹² a regulation “made under” the code,¹³ or a regulation “issued under” the code.¹⁴

These phrases all seem to have the same meaning. They are simply using different terminology to describe a regulation that was promulgated pursuant to authority in the Fish and Game Code. **For drafting clarity, the staff recommends that the terminology be standardized throughout the proposed law.** We recommend using the phrase “adopted pursuant to,” which appears to be the most common usage.¹⁵ **The staff invites public comment on this issue.**

CONCLUSION

The attached draft represents an initial attempt to consolidate the provisions of the existing Fish and Game Code that primarily relate to hunting, fishing, and other public uses. There may be other provisions that should be located with those materials. If the staff discovers any similar provisions as this study proceeds, they can be added to proposed Part 1 of Division 5.

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.¹⁶ Because the Commission is new to fish and game law, it is important that subject matter

11. See Section 714 (proposed Section 5900), Section 2000.5 (proposed Section 5005), Section 2009 (proposed Section 5130), Section 2544 (proposed Section 5720), Section 2546 (proposed Section 5800), Section 12156.5 (proposed Section 5810), Section 12157 (proposed Section 5430).

12. See Section 2000 (proposed Section 5000), Section 12165 (proposed Section 5805).

13. See Section 2002 (proposed Section 5010).

14. See Section 307 (proposed Section 5505).

15. The word “adopt” is consistently used in conjunction with referenced regulations in the Administrative Procedure Act. Gov’t Code §§ 11340-11361.

16. See 2012 Cal. Stat. res. ch. 108.

experts assist in identifying such problems as the Commission proceeds through the code.

Respectfully submitted,

Steve Cohen
Staff Counsel

FISH AND WILDLIFE CODE

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

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

A draft of an official Commission “Comment” follows each proposed section. Such Comments will be included in any final recommendation. They serve to indicate the source of each section and to describe how it compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation. For guidance on the terminology used in Commission Comments, see the Comment following proposed Section 20 (attached to Memorandum 2013-12).

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

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

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

- (1) Responses to any questions posed in “Staff Notes.”
- (2) Any inconsistency, obsolescence, ambiguity, or problems relating to program authority and funding, whether *within* the provisions of this draft or *between* the provisions of this draft and other provisions of law.
- (3) Provisions that should have been included in this draft but were not (or provisions included in this draft that should have been located elsewhere).
- (4) Technical drafting errors.

Comments should be directed to Steve Cohen at scohen@clrc.ca.gov.

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DIVISION 5. HUNTING, FISHING, AND OTHER PUBLIC USE

PART 1. GENERAL PROVISIONS

TITLE 1. PROHIBITIONS AND REMEDIES

CHAPTER 1. GENERAL PROHIBITIONS

§ 5000. Unauthorized take

5000. (a) It is unlawful to take any bird, mammal, fish, reptile, or amphibian, except as provided in this code or in a regulation adopted pursuant to this code.

(b) Possession of a bird, mammal, fish, reptile, or amphibian, or part thereof, in or on the fields, forests, or waters of this state, or while returning therefrom with fishing or hunting equipment, is prima facie evidence the possessor took the bird, mammal, fish, reptile, or amphibian, or part thereof.

Comment. Section 5000 continues former Fish and Game Code Section 2000 without change, except as indicated below:

The following substantive change is made:

- In subdivision (b), “amphibian” is added to the list of referenced animals, consistent with the listing in subdivision (a).

The following nonsubstantive changes are made:

- Subdivision designations are added.
- Commas are added for clarity.
- The phrase “regulations made pursuant thereto” is revised to read “in a regulation adopted pursuant to this code.”
- The word “parts” is singularized.
- The phrase “or part thereof” is set off by commas for clarity.

Staff Notes. (1) Existing Section 2000 refers to regulations “made” pursuant to the Fish and Game Code. The staff has standardized this usage in proposed Section 5000 to refer to a regulation “adopted” pursuant to the code, consistent with more common modern usage in the existing code (e.g., existing Sections 1574, 3240.5, 13006). **The staff invites comment on whether this substitution is appropriate.**

(2) The term “amphibian,” which is referenced in the first sentence of existing Section 2000, appears to have been inadvertently omitted in two instances from the second sentence of the provision. Proposed Section 5000 would correct those omissions. **The staff invites comment on whether that correction is appropriate.**

(3) The text of existing Section 2000 does not make clear whether the prima facie evidence described in subdivision (b) requires possession of fishing or hunting equipment in *all* cases, or only when a person is “returning [from the fields, forests, or waters of this state].” **The staff invites comment on how this aspect of existing Section 2000 is understood and treated in practice.**

§ 5005. Accidental take

5005. (a) Notwithstanding Sections 675, 5000, or any other provision of law, and notwithstanding any requirement for a permit or license or other entitlement to

1 take a species, the accidental taking of a bird, mammal, reptile, or amphibian by
2 collision with a motor vehicle while the vehicle is being operated on a road or
3 highway is not a violation of this code or a regulation adopted pursuant to this
4 code.

5 (b) For purposes of this section, “highway” means highway as defined by
6 Section 360 of the Vehicle Code and “road” means road as defined by Section 527
7 of the Vehicle Code.

8 (c) Nothing in this section authorizes a person to possess any bird, mammal,
9 reptile, or amphibian accidentally taken by collision with a motor vehicle as
10 provided in this subdivision. However, accidental takes on the road or highway
11 may be removed by the state or local agency having jurisdiction over the road or
12 highway.

13 (d) This section does not apply to **Chapter 1.5 (commencing with Section**
14 **2050)**.

15 **Comment.** Section 5005 continues former Section 2000.5 without change, except as indicated
16 below:

17 The following nonsubstantive changes are made:

- 18 • Subdivision (a) of former Fish and Game Code Section 2000.5 is divided into three
19 subdivisions.
- 20 • In subdivision (a), cross-references to former Fish and Game Code Sections 219 and
21 2000 are replaced with references to Sections 675 and 5000.


22 **§ 5010. Unlawful possession**

23 5010. It is unlawful to possess any bird, mammal, fish, reptile, or amphibian, or
24 part thereof, taken in violation of any provision of this code or any regulation
25 adopted pursuant to this code.

26 **Comment.** Section 5010 continues former Fish and Game Code Section 2002 without change,
27 except as indicated below:

28 The following nonsubstantive changes are made:

- 29 • The words “parts” and “provisions” are singularized.
- 30 • A comma is removed for clarity.
- 31 • The phrase “of any regulation made under it” is revised to read “any regulation adopted
32 pursuant to this code.”

33  **Staff Note.** Existing Section 2002 refers to regulations “made” pursuant to the Fish and Game
34 Code. The staff has standardized this usage in proposed Section 5010 to refer to a regulation
35 “adopted” pursuant to the code, consistent with more common modern usage in the existing code
36 (e.g., existing Sections 1574, 3240.5, 13006). **The staff invites comment on whether this**
37 **substitution is appropriate.**

38 **§ 5015. Season and possession limits**

39 5015. (a) It is unlawful to take any mammal, bird, fish, reptile, or amphibian
40 outside of established seasons or to exceed any bag limit or possession limit
41 established in this code or by a regulation adopted by the commission. Violation of
42 any established season, bag limit, or possession limit may be charged as a

1 violation of this section or of the specific code section or regulation that
2 establishes the season or limit.

3 (b) Unless otherwise provided, it is unlawful to possess a fish, reptile, or
4 amphibian, except during the open season where the fish, reptile, or amphibian
5 was taken or during the 10-day period immediately following that open season.
6 Any possession limit applicable during the open season applies during that 10-day
7 period.

8 (c) Except as provided in Section **3080**, it is unlawful to possess a game bird or
9 mammal except during the open season where the game bird or mammal was
10 taken.

11 **Comment.** Section 5015 continues former Fish and Game Code Section 2001 without change,
12 except as indicated below:

13 The following nonsubstantive changes are made:

- 14 • The words “mammals,” “birds,” “reptiles,” “amphibians,” and “regulations” are
15 singularized throughout.
- 16 • Subdivision (b) is revised for clarity.

17 **Staff Notes.** (1) Subdivision (b) of proposed Section 5015 is intended to restate subdivision
18 (b) of existing Section 2001 to improve its clarity, without changing its substantive effect. The
19 existing provision reads as follows:

20 “(b) Unless otherwise provided, it is unlawful to possess fish, reptiles, or amphibians except
21 during the open season where taken and for 10 days thereafter; and not more than the possession
22 limit thereof may be possessed during the period after the close of the open season.”

23 **The staff invites public comment on whether the proposed restatement would cause any
24 substantive change in the meaning of the provision.**

25 (2) In subdivision (b), the described open season appears to turn on the site where the animal
26 was *taken*, rather than the site of possession. **The staff invites comment on whether this aspect
27 of existing Section 2001 has been a problem in practice.**

28 (3) Subdivision (c) refers to “game” birds and mammals. The staff has two questions regarding
29 this reference.

30 (a) In subdivision (c), is the word “game” meant to modify only “birds,” or both “birds” and
31 “mammals”?

32 (b) What is the rationale for limiting the application of subdivision (c) to “game” birds (and
33 mammals)? Is there a reason that rationale does not apply to subdivisions (a) and (b)?

34 **The staff invites comment on both of these issues.**

35 **CHAPTER 2. SPECIAL PROHIBITIONS**

36 **§ 5100. Violation for personal gain**

37 5100. (a) Any person who illegally takes, possesses, imports, exports, sells,
38 purchases, barter, trades, or exchanges any amphibian, bird, fish, mammal, or
39 reptile, or part thereof, for profit or personal gain, is guilty of a misdemeanor
40 punishable by a fine of not less than five thousand dollars (\$5,000), nor more than
41 forty thousand dollars (\$40,000), or imprisonment in the county jail for not more
42 than one year, or by both that fine and imprisonment.

1 (b) If a person is convicted of a second or subsequent violation of subdivision
2 (a), that person shall be punished by a fine of not less than ten thousand dollars
3 (\$10,000), nor more than fifty thousand dollars (\$50,000), or imprisonment in the
4 county jail for not more than one year, or by both that fine and imprisonment.

5 (c) If a second or subsequent violation of subdivision (a) also involves a
6 violation of Section **8685.5, 8685.6, 8685.7, or 8688** that is punishable by
7 **subdivision (b) of Section 12004**, the offense shall be punishable by a fine of not
8 more than fifty thousand dollars (\$50,000), or by imprisonment pursuant to
9 **subdivision (b) of Section 12004**, or by both that fine and imprisonment.

10 (d) Notwithstanding Section 802 of the Penal Code, prosecution of an offense
11 punishable under this section shall be commenced within three years after
12 commission of the offense.

13 (e) This section does not apply to fish taken pursuant to a commercial fishing
14 license issued pursuant to Section **7852**, or fish sold pursuant to a commercial fish
15 business license issued in accordance with **Article 7 (commencing with Section**
16 **8030) of Chapter 1 of Part 3 of Division 6.**

17 (f) This section does not supersede Section **12005** or **12009**.

18 (g)(1) Moneys equivalent to 50 percent of the revenue deposited in the Fish and
19 Game Preservation Fund from fines and forfeitures collected pursuant to this
20 section shall be allocated for the support of the Special Operations Unit of the
21 department, and used for law enforcement purposes.

22 (2) Moneys equivalent to 50 percent of the revenue from any fine collected
23 pursuant to this section shall be paid to the county in which the offense was
24 committed, pursuant to Section 2710. The board of supervisors shall first use
25 revenues pursuant to this subdivision to reimburse the costs incurred by the district
26 attorney or city attorney in investigating and prosecuting the violation. Any excess
27 revenues may be expended in accordance with Section 2710.

28 **Comment.** Section 5100 continues former Fish and Game Code Section 12012 without
29 change, except as indicated below:

30 The following nonsubstantive changes are made:

- 31 • In paragraph (g)(2), cross-references to former Fish and Game Code Section 13003 are
32 revised to refer to proposed Section 2710.
- 33 • In subdivision (a), a comma is added for clarity.

34 **Staff Note.** In a staff draft accompanying Memorandum 2013-50, a Staff Note following
35 proposed Section 2650 invited comment on whether references to the “Fish and Game
36 Preservation Fund” should be revised to instead refer to the “Fish and *Wildlife* Preservation
37 Fund.” **Proposed Section 5100 presents this issue.**

38 **§ 5105. Triple possession limit**

39 5105. (a) Any person who illegally takes or possesses in the field more than
40 three times the daily bag limit, or who illegally possesses more than three times
41 the legal possession limit, of fish, reptiles, birds, amphibians, or mammals, is
42 guilty of a misdemeanor, and shall be subject to a fine of not less than five

1 thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or
2 imprisonment in a county jail for not more than one year, or by both that fine and
3 imprisonment.

4 (b) If a person is convicted of a second or subsequent violation of subdivision
5 (a), that person shall be punished by a fine of not less than ten thousand dollars
6 (\$10,000), nor more than fifty thousand dollars (\$50,000), or imprisonment in a
7 county jail for not more than one year, or by both that fine and imprisonment.

8 (c) Nothing in this section prohibits a person from giving, receiving, or
9 possessing the legal possession limit of lawfully taken fish, reptiles, birds,
10 amphibians, or mammals.

11 (d) Nothing in this section prohibits a person from giving, receiving, or
12 possessing, at the personal abode of the donor or donee, lawfully taken migratory
13 game birds that are not required to be tagged pursuant to the federal Migratory
14 Bird Treaty Act (16 U.S.C. Sec. 703 et seq.) or regulations adopted pursuant to
15 that act.

16 (e) This section does not supersede Section **12005, 12006.6, or 12009**.

17 (f) Moneys equivalent to 50 percent of the revenue from any fine collected
18 pursuant to this section shall be paid to the county in which the offense was
19 committed, pursuant to Section 2710. The board of supervisors shall first use
20 revenues pursuant to this subdivision to reimburse the costs incurred by the district
21 attorney or city attorney in investigating and prosecuting the violation. Any excess
22 revenues may be expended in accordance with Section 2710.

23 **Comment.** Section 5105 continues subdivisions (a), (b), and (d)-(g) of former Fish and Game
24 Code Section 12013 without change, except as indicated below:

25 The following nonsubstantive changes are made:

- 26 • Subdivision designations are revised to reflect the continuation of subdivision (c) of
27 former Fish and Game Code Section 12013 in Section 5110.
- 28 • In subdivision (a), commas are added for clarity.
- 29 • In subdivision (f), cross-references to former Fish and Game Code Section 13003 are
30 revised to refer to Section 2710.

31 **§ 5110. Torture**

32 5110. (a) Any person who maliciously and intentionally maims, mutilates, or
33 physically tortures any fish, reptile, bird, amphibian, or mammal governed by this
34 code is guilty of a crime, and shall be subject to a fine of not less than five
35 thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or
36 imprisonment in a county jail for not more than one year, or by both that fine and
37 imprisonment. Nothing in this subdivision affects any legal activity pursuant to
38 this code, including, but not limited to, hunting, fishing, trapping, hunting dog
39 training, hunting dog field trials, predation control, and efforts to dispatch a
40 wounded mammal, bird, or fish taken legally.

41 (b) Moneys equivalent to 50 percent of the revenue from any fine collected
42 pursuant to this section shall be paid to the county in which the offense was
43 committed, pursuant to Section 2710. The board of supervisors shall first use

1 revenues pursuant to this subdivision to reimburse the costs incurred by the district
2 attorney or city attorney in investigating and prosecuting the violation. Any excess
3 revenues may be expended in accordance with Section 2710.

4 **Comment.** Section 5110 continues subdivisions (c) and (g) of former Fish and Game Code
5 Section 12013 without change, except as indicated below:

6 The following nonsubstantive changes are made:

- 7 • In subdivision (a), the phrase “provided for in” is replaced with “governed by.”
- 8 • In subdivision (a), a cross-reference to former Fish and Game Code Section 12013(a) is
9 replaced with the relevant substantive content of that subdivision.
- 10 • In subdivision (b), cross-references to former Fish and Game Code Section 13003 are
11 revised to refer to Section 2710.

12 **Staff Notes.** (1) Under existing law, the provision prohibiting torture of animals is
13 embedded in a section that also punishes exceeding a possession limit by a factor of three. See
14 Section 12013. Section 12013 has a number of provisions that apply, by their terms, to the entire
15 section. In analyzing those provisions, the staff concluded that some of them were not relevant to
16 the prohibition on torture. See Section 12013(d)-(f). Those provisions were continued in proposed
17 Section 5105(c)-(e), but were not continued in Section 5110. **The staff invites comment on
18 whether that revision would cause any problematic change in the law.**

19 (2) In the second sentence of proposed Section 5110(a), the meaning of the word “affects”
20 could be clearer. If the sentence is meant to create an exemption (as seems to be the case), would
21 it be better to parallel the wording of the first sentence, thus: “This section does not apply to any
22 activity made lawful by this code, including but not limited to....”? **The staff invites comment
23 on this possible revision.**

24 **§ 5115. Prize**

25 5115. (a) Except as specified in subdivisions (b), (c), and (d), it is unlawful to
26 offer any prize or other inducement as a reward for the taking of any game bird,
27 mammal, fish, reptile, or amphibian in an individual contest, tournament, or derby.

28 (b) The department may issue a permit to any person authorizing that person to
29 offer a prize or other inducement as a reward for the taking of any game fish, as
30 defined by the commission by regulation, if it finds that there would be no
31 detriment to the resource. The permit is subject to regulations adopted by the
32 commission. The application for the permit shall be accompanied by a fee in the
33 amount determined by the department as necessary to cover the reasonable
34 administrative costs incurred by the department in issuing the permit. However,
35 the department may waive the permit fee if the contest, tournament, or derby is for
36 persons under the age of 16 years, or for persons with physical or mental
37 disabilities, or if the primary purpose of the contest, tournament, or derby is to
38 introduce young anglers to or educate them about fishing. All permits for which
39 the fee is waived pursuant to this subdivision shall comply with all other
40 requirements set forth in this section.


41 (c) This section does not apply to any person conducting what are generally
42 known as frog-jumping contests, or fish contests conducted in waters of the
43 Pacific Ocean.

1 (d) This section does not apply to any person conducting an individual contest,
2 tournament, or derby for the taking of a game bird or mammal, if the total value of
3 all prizes or other inducements is less than five hundred dollars (\$500) for the
4 individual contest, tournament, or derby.

5 **Comment.** Section 5115 continues former Fish and Game Code Section 2003 without change,
6 except as indicated below:

7 The following nonsubstantive changes are made:

- 8 • The words “mammals,” “birds,” “reptiles,” “amphibians,” and “regulations” are
9 singularized throughout.
- 10 • The phrase “who are physically or mentally challenged” is replaced with “for persons
11 with physical or mental disabilities.”
- 12 • In subdivision (b), a comma is deleted for clarity.
- 13 • In subdivision (c), a comma is added for clarity.

14  **Staff Note.** In subdivisions (a) and (d) of existing Section 2003, it is unclear whether the
15 word “game” is meant to modify only the word “birds,” or also modify any of the listed animals
16 that follow. **The staff invites comment on how these two aspects of existing Section 2003 are**
17 **understood or treated in practice.**

18 § 5120. Property damage

19 5120. It is unlawful for any person, while taking any bird, mammal, fish, reptile,
20 or amphibian, to cause damage, or assist in causing damage, to real or personal
21 property, or to leave a gate or bar open, or to break down, destroy, or damage a
22 fence, or to tear down or scatter a pile of rails, posts, stone, or wood, or, through
23 carelessness or negligence, to injure any livestock.

24 **Comment.** Section 5120 continues former Fish and Game Code Section 2004 without change,
25 except as indicated below:

26 The following nonsubstantive changes are made:

- 27 • The words “gate,” “bar,” “fence,” and “pile” are singularized.
- 28 • The phrase “livestock of any kind” is replaced with “any livestock.”

29 § 5125. Lights

30 5125. (a) Except as otherwise provided by this section, it is unlawful to use an
31 artificial light to assist in the taking of any game bird, game mammal, or game
32 fish.

33 (b) It is unlawful for any person, or one or more persons, to throw or cast the
34 rays of any spotlight, headlight, or other artificial light on any highway or in any
35 field, woodland, or forest where game mammals, fur-bearing mammals, or
36 nongame mammals are commonly found, or upon any game mammal, fur-bearing
37 mammal, or nongame mammal, while having in his or her possession or under his
38 or her control any firearm or weapon with which that mammal could be killed,
39 even though the mammal is not killed, injured, shot at, or otherwise pursued.

40 (c) It is unlawful to use or possess any night vision equipment to assist in the
41 taking of any bird, mammal, amphibian, or fish. For purposes of this subdivision,
42 “night vision equipment” includes but is not limited to the following:

1 (1) Any infrared or similar light, used in connection with an electronic viewing
2 device.

3 (2) Any optical device, including but not limited to binoculars or a scope, that
4 uses electrical or battery powered light amplifying circuits.

5 (d) This section does not apply to any of the following:

6 (1) Sport fishing in ocean waters, or other waters where night fishing is
7 permitted, if an artificial light is not used on or as part of the fishing tackle.

8 (2) Commercial fishing.

9 (3) The taking of mammals governed by **Article 2 (commencing with Section**
10 **4180) of Chapter 3 of Part 3 of Division 4.**

11 (4) The use of a hand-held flashlight that is no larger and emits no more light
12 than a two-cell, three-volt flashlight, and is not affixed to a weapon.

13 (5) The use of a lamp or lantern that does not cast a directional beam of light.

14 (6) Headlights of a motor vehicle that are operated in a usual manner and
15 without attempt or intent to locate a game mammal, fur-bearing mammal, or
16 nongame mammal.

17 (7) An owner of land devoted to the agricultural industry, or his or her
18 employee, while on that land.

19 (8) An owner of land devoted to the agricultural industry, or the owner's
20 employee, while on land controlled by the owner in connection with the
21 agricultural industry.

22 (9) Other uses as the commission may authorize by regulation.

23 (e) A person shall not be arrested for violation of this section except by a peace
24 officer.

25 **Comment.** Section 5125 continues former Fish and Game Code Section 2005 without change,
26 except as indicated below:

27 The following nonsubstantive changes are made:

- 28 • In subdivision (a), the word "authorized" is replaced with "provided."
- 29 • In subdivision (a), the words "game birds" and "game mammals" are singularized.
- 30 • The exceptions to the application of the section stated in former Fish and Game Code
31 Section 2005(a) are added to subdivision (d) of Section 5125.
- 32 • Subdivisions (c) and (d) of Section 5125 are restated for clarity.

33 **Staff Notes.** (1) Subdivisions (c) and (d) of proposed Section 5125 are intended to restate a
34 part of existing Sections 2005(a), (c), and (d) to improve their clarity, without changing their
35 substantive effect. The existing provision reads as follows:

36 "2005. (a) Except as otherwise authorized by this section, it is unlawful to use an artificial
37 light to assist in the taking of game birds, game mammals, or game fish, except that this section
38 shall not apply to sport fishing in ocean waters or other waters where night fishing is permitted if
39 the lights are not used on or as part of the fishing tackle, commercial fishing, nor to the taking of
40 mammals, the taking of which is governed by Article 2 (commencing with Section 4180) of
41 Chapter 3 of Part 3 of Division 4.

42

43 (c) It is unlawful to use or possess at any time any infrared or similar light used in connection
44 with an electronic viewing device or any night vision equipment, optical devices, including, but
45 not limited to, binoculars or scopes, that use light-amplifying circuits that are electrical or battery

1 powered, to assist in the taking of birds, mammals, amphibians, or fish.

2 (d) The provisions of this section do not apply to any of the following:

3 (1) The use of a hand-held flashlight no larger, nor emitting more light, than a two-cell, three-
4 volt flashlight, provided that light is not affixed in any way to a weapon, or to the use of a lamp or
5 lantern that does not cast a directional beam of light.

6 (2) Headlights of a motor vehicle operated in a usual manner where there is no attempt or
7 intent to locate a game mammal, fur-bearing mammal, or nongame mammal.

8 (3) To the owner, or his or her employee, of land devoted to the agricultural industry while on
9 that land, or land controlled by such an owner and in connection with the agricultural industry.

10 (4) To those other uses as the commission may authorize by regulation.”

11 **The staff invites public comment on whether the proposed restatement would cause any**
12 **substantive change in the meaning of Section 2005(a), (c), or (d).**

13 (2) Subdivision (a) of existing Section 2005 contains a reference to “game fish.” This category
14 of fish is not defined anywhere in the existing code. The term is defined in a regulation, 14 C.F.R.
15 Section 230(b)(1), but only for the purposes of that regulation (issuance of permits for contests
16 offering prizes for the taking of such fish). **The staff invites comment on the meaning of the**
17 **term.**

18 (3) The staff notes that the prohibition in subdivision (c) applies to birds, mammals,
19 amphibians, and fish, but not reptiles. **The staff invites comment on whether the omission of**
20 **reptiles was inadvertent.**

21 (4) The exception to this section in existing Section 2005(d)(3) – continued in proposed
22 Section 5125(d)(7) and (8) – is convoluted. It appears to exempt owners of agricultural land and
23 their employees, but not tenants of such land. Is this distinction intended as a matter of policy? If
24 not, would it be sufficient for the exception to apply to “a person who owns or controls land
25 devoted to the agricultural industry, or that person’s employee, while on that land”? **The staff**
26 **invites comment on this issue.**

27 **§ 5130. Interference**

28 5130. (a) Except as otherwise provided in this section, it is unlawful for a
29 person, with the specific intent to do so, to interfere with the participation of any
30 individual in the lawful activity of shooting, hunting, fishing, falconry, hunting
31 dog field trials, hunting dog training, or trapping at the location where that activity
32 is taking place.

33 (b) For purposes of this section, “interfere with” means any action that
34 physically impedes, hinders, or obstructs the lawful pursuit of any activity listed in
35 subdivision (a), including, but not limited to, any of the following:

36 (1) An action intended to frighten away animals from the location where the
37 lawful activity is taking place.

38 (2) Placing or maintaining a sign, gate, lock, or barricade that prohibits or denies
39 access to land without authorization from the landowner or lessee or an authorized
40 designee of the landowner or lessee.

41 (3) Placing food on land not belonging to the person placing the food for
42 purposes of eliminating the lawful ability to hunt due to the presence of bait, as
43 defined in this code or in a regulation adopted pursuant to this code.

44 (c) A violation of this section is punishable pursuant to **subdivision (b) of**
45 **Section 12000.**

1 (d) Any person convicted for a violation of this section that occurred within two
2 years of a prior violation of this section that resulted in a conviction is guilty of a
3 misdemeanor, punishable by imprisonment in the county jail for a period of not
4 more than one year, by a fine of not less than one hundred dollars (\$100) and not
5 to exceed one thousand dollars (\$1,000), or by both imprisonment and fine.

6 (e) This section does not apply to the actions of any peace officer or personnel
7 of the department in the performance of official duties. This section does not
8 obstruct the rights and normal activities of landowners or tenants, including, but
9 not limited to, farming, ranching, and limiting unlawful trespass.

10 **Comment.** Section 5130 continues former Fish and Game Code Section 2009 without change,
11 except as indicated below:

12 The following nonsubstantive changes are made:

- 13 • The phrase “Except as otherwise provided in this section, it is unlawful for” is added to
14 the beginning of the section.
- 15 • The requirement in former Fish and Game Code Section 2009(e) of specific intent to
16 interfere as a prerequisite for liability under the section is incorporated in subdivision
17 (a), replacing the word “willfully” in former Fish and Game Code Section 2009(a).
- 18 • Former Fish and Game Code Section 2009(e) is continued in Section 5130(b).
- 19 • The word “which” is replaced with “that.”
- 20 • In subdivision (b), the phrase “any of the above-mentioned activities” is replaced with
21 “any activity listed in subdivision (a).”
- 22 • In paragraph (b)(1), the phrase “Actions taken for the purpose of” is replaced with “An
23 action intended to.”
- 24 • The words “signs,” “gates,” “locks,” “barricades,” and “lands” are singularized.
- 25 • In subdivision (e), the superfluous word “their” is deleted.

26 **Staff Notes.** (1) Existing Section 2009(a) requires that the interference prohibited by this
27 section be done “willfully,” and in subdivision (e) that the prohibited conduct be engaged in with
28 “the specific intent to interfere.” As the term “willfully” appears to be subsumed within the
29 requirement of specific intent, proposed Section 5130(a) would reference only the latter term to
30 express the mental state required by the provision. **The staff invites comment on whether this
31 revision is appropriate.**

32 (2) The second sentence of proposed Section 5130(e) provides that this section “does not
33 obstruct the rights and normal activities of landowners or tenants.” If this language is intended to
34 establish an exemption (as appears to be the case) should the sentence be revised to parallel the
35 first sentence of subdivision (d), and provide that the section “does not apply” to the exempted
36 conduct? **The staff invites comment on this issue.**

37 § 5135. Signs

38 5135. (a) It is unlawful to do any of the following:

39 (a) Post any sign indicating an area is a state or federal refuge unless established
40 by state or federal law.

41 (b) Post any sign prohibiting trespass or hunting on any land unless authorized
42 by the owner or the person in lawful possession of that land.

43 (c) Maliciously tear down, mutilate, or destroy any sign, signboard or other
44 notice forbidding hunting or trespass on land.

45 **Comment.** Section 5135 continues former Fish and Game Code Section 2018 without change,
46 except as indicated below:

1 The following nonsubstantive changes are made:

- 2 • Subdivision designations are added.
- 3 • In subdivision (a), the superfluous words “it is” are deleted.
- 4 • In subdivision (b), the words “such lands” are replaced with “this land.”
- 5 • In subdivision (c), the superfluous words “for any person” are deleted.

6 **§ 5140. Possession in restaurant**

7 5140. (a) Except as otherwise provided in this section, it is unlawful to possess
8 any bird, mammal, fish or amphibian that may not be legally sold, in any
9 restaurant or other eating establishment.

10 (b) This section does not apply to any of the following:

11 (1) A person who lawfully took or otherwise legally possessed the bird,
12 mammal, fish, or amphibian.

13 (2) A person preparing the bird, mammal, fish, or amphibian for consumption by
14 the person who lawfully took or possessed it, or by that person and others, if the
15 person who took or possessed it is present on the premises.

16 (3) A bird, mammal, fish, or amphibian tagged with a signed statement of the
17 person who took the bird, mammal, fish, or amphibian, stating that person’s name
18 and address, the date taken, and the total number and kind taken.

19 **Comment.** Section 5140 continues former Fish and Game Code Section 2015 without change,
20 except as indicated below:

21 The following nonsubstantive changes are made:

- 22 • Subdivision designations are added.
- 23 • The exceptions to the application of the section stated in the first paragraph of former
24 Fish and Game Code Section 2015 are added to subdivision (b) of Section 5140.
- 25 • The phrase “Except as otherwise provided in this section,” is added to the beginning of
26 the section.
- 27 • The word “which” is replaced with “that.”
- 28 • The word “such” is replaced with “that.”
- 29 • In paragraph (b)(2), the word “and” is replaced with “if.”
- 30 • Paragraph (b)(3) is restated for clarity.

31 **Staff Notes.** (1) Paragraph (b)(3) of proposed Section 5140 is intended to restate the second
32 undesignated paragraph of existing Section 2015 to improve its clarity, without changing its
33 substantive effect. The existing provision reads as follows:

34 “This section does not apply to birds, mammals, fish or amphibia in a restaurant or other
35 eating establishment which are tagged with a signed statement of the name and address of the
36 person who took them, the date taken, and the total number and kind of birds, mammals, fish or
37 amphibia.”

38 **The staff invites public comment on whether the proposed restatement would cause any**
39 **substantive change in the meaning of the provision.**

40 (2) The prohibition in this section applies to birds, mammals, fish and amphibians, but not
41 reptiles. **The staff invites comment on whether the omission of reptiles was inadvertent.**

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CHAPTER 3. SPECIAL REMEDIES

Article 1. Civil Liability

§ 5300. Civil action to recover damages

5300. (a) It is the policy of this state to conserve its natural resources and to prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or amphibia.

(b) The state may recover damages in a civil action against any person or local agency that unlawfully or negligently takes or destroys any bird, mammal, fish, reptile, or amphibian protected by the laws of this state.

(c) The measure of damages is the amount that will compensate for all the detriment proximately caused by the taking or destruction.

(d) An action to recover damages under this section shall be brought in the name of the people of the state, in a court of competent jurisdiction in the county in which the cause of action arose. The State Water Resources Control Board shall be notified of, and may join in, any action brought under this section when the activities alleged to have caused the destruction of any bird, mammal, fish, reptile, or amphibian may involve either the unlawful discharge of pollutants into the waters of the state or other violation of Division 7 (commencing with Section 13000) of the Water Code.

(e) This section does not apply to any of the following:

- (1) Persons or local agencies engaged in agricultural pest control.
- (2) The destruction of fish in irrigation canals or works, or irrigation drainages.
- (3) The lawful destruction of a bird or mammal killed while damaging crops.

(f) No damages may be recovered against a local agency pursuant to this section if civil penalties are assessed against the local agency for the same detriment pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(g) Any recovery or settlement of money damages, including, but not limited to, civil penalties, arising out of any civil action filed and maintained by the Attorney General in the enforcement of this section shall be deposited by the dement in the subaccounts of the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund as specified in Section 13011.

(h) For purposes of this section, “local agency” includes any city, county, city and county, district, public authority, or other political subdivision.

Comment. Section 5300 continues former Fish and Game Code Section 2014 without change, except as indicated below:

The following nonsubstantive changes are made:

- An additional subdivision designation is added to subdivision (a) of former Fish and Game Code Section 2014, and the other subdivisions of the section are revised accordingly.
- The word “which” is replaced with “that” throughout.
- In subdivision (c), the omitted word “taking” is added.

- In subdivision (c), a superfluous reference to “birds, mammals, fish, reptiles, or amphibians” is deleted.
- Paragraph designations are added to subdivision (e).
- In paragraph (e)(3), the words “birds” and “mammals” are singularized.
- In paragraph (e)(3), the words “as provided by law” are replaced with “lawful.”

Staff Notes. (1) Subdivision (a) of existing Section 2014 authorizes a civil action for unlawful or negligent taking *or* destruction of a specified animal. However, subdivision (b), stating the measure of damages in such an action, refers only to the detriment proximately caused by the *destruction* of the animal. Proposed Section 5300 would conform subdivision (b) to subdivision (a), to address scenarios in which an animal was wrongfully taken but not destroyed.

The staff invites comment on whether this revision is appropriate.

(2) In a staff draft accompanying Memorandum 2013-50, a Staff Note following proposed Section 2650 invited comment on whether references to the “Fish and Game Preservation Fund” should be revised to instead refer to the “Fish and *Wildlife* Preservation Fund.” **Proposed Section 5300 presents this issue.**

Article 2. License Suspension

§ 5350. Suspension or revocation of license

5350. (a) In addition to any fine or other punishment imposed, a sport fishing or hunting license may, in the discretion of the court, be suspended or revoked upon the licensee’s conviction of a violation of any provision of this code or regulation adopted pursuant to this code, relating to hunting or fishing, for purposes other than profit.

(b) Any person who obtains another hunting or fishing license during the period his or her license has been suspended or revoked is guilty of a misdemeanor.

Comment. Section 5350 continues former Fish and Game Code Section 12158 without change, except as indicated below:

The following nonsubstantive changes are made:

- Subdivision designations are added.
- The phrase “in addition to any fine or other punishment imposed” is moved to the beginning of subdivision (a).
- In subdivision (a), the word “The” is replaced with “a.”
- In subdivision (a), commas are added for clarity.
- The superfluous words “of any person to whom such a license has been issued” is deleted.
- The section is made gender-neutral.
- The phrase “regulation made pursuant thereto” is replaced with “regulation adopted pursuant to this code.”

Staff Note. Existing Section 12158 refers to regulations “made” pursuant to the Fish and Game Code. The staff has standardized this usage in proposed Section 5350 to refer to a regulation “adopted” pursuant to the code, consistent with more common modern usage in the existing code. **The staff invites comment on whether this substitution is appropriate.**

1 **§ 5355. Suspension or revocation for specified offenses**

2 5355. (a) Upon a conviction of a violation of this code or any regulation adopted
3 pursuant thereto that is punishable pursuant to Section 5100, 5105, 5110, **12013.3**,
4 or **12013.5**, the department may suspend or permanently revoke a person’s hunting
5 or sport fishing license or permit privileges.

6 (b)(1) Any person whose privileges are suspended or revoked pursuant to this
7 section may appeal the suspension or revocation to the commission. The
8 commission shall initiate the appeal process within 12 months of the violator’s
9 appeal request. The commission shall consider at least the nature, circumstances,
10 extent, and gravity of the person’s violations, the person’s culpability for the
11 violations, and the injury to natural resources by the violations, and may restore a
12 person’s hunting or sport fishing license or permit privileges.

13 (2) The department may adopt regulations to implement this subdivision.

14 (c) Pursuant to subdivision (c) of Section 5430, a judge may order the seizure or
15 forfeiture of any device or apparatus, including a vessel, vehicle, or hunting or
16 fishing gear, that is used in committing an offense punishable under Section 5100,
17 5105, 5110, **12013.3**, or **12013.5**.

18 **Comment.** Section 5355 continues former Fish and Game Code Section 12154 without
19 change, except as indicated below:

20 The following nonsubstantive changes are made:

- 21 • In subdivisions (a) and (c), a cross-reference to former Fish and Game Code Section
22 12012 is revised to refer to Section 5100.
- 23 • In subdivisions (a) and (c), a cross-reference to former Fish and Game Code Section
24 12013 is revised to refer to Sections 5105 and 5110.
- 25 • In subdivision (c), a cross-reference to former Fish and Game Code Section 12157 is
26 revised to refer to Section 5430.

27 **§ 5360. Effect of termination of probation and dismissal of charges**

28 5360. A termination of probation and dismissal of charges pursuant to Section
29 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of
30 the Penal Code does not affect either a past revocation or suspension of any
31 license or permit to take fish or wildlife, or the authority of the commission or a
32 court to revoke or suspend a license or permit to take fish or wildlife.

33 **Comment.** Section 5360 continues former Fish and Game Code Section 12166 without
34 change, except as indicated below:

35 The following nonsubstantive changes are made:

- 36 • The word “game” is replaced with “wildlife.”
- 37 • The phrase “license or permit to take fish and game” is replaced with “license or permit
38 to take fish or wildlife.”

39 **§ 5365. Procedures governing revocation or suspension**

40 5365. (a) The commission shall adopt regulations and procedures governing the
41 revocation or suspension of hunting or sport fishing privileges. The regulations
42 shall provide for notice and opportunity for a hearing.

1 (b) Any person, whose license was revoked pursuant to Section 5355, **12155**, or
2 **12156**, may appeal to the commission for reissuance of the license and termination
3 of the prohibition against the taking of fish, reptiles, amphibians, or birds or
4 mammals.

5 (c) After a public hearing at which the person has appeared in person, the
6 commission may terminate the prohibition and authorize the issuance of a license
7 if it finds that there are sufficient mitigating circumstances to warrant that action.

8 (d) It is unlawful for a person whose hunting or sport fishing privileges have
9 been revoked or suspended to obtain or attempt to obtain, or to possess a hunting
10 or sport fishing license, permit, or tag during that suspension or revocation period.

11 (e) Any person who violates subdivision (d) is guilty of an infraction punishable
12 by a fine of not less than one hundred dollars (\$100) or more than one thousand
13 dollars (\$1,000), or of a misdemeanor.

14 **Comment.** Section 5365 continues former Fish and Game Code Section 12155.5 without
15 change, except as indicated below:

16 The following nonsubstantive changes are made:

- 17 • In subdivision (b), a cross-reference to former Fish and Game Code Section 12154 is
18 revised to refer to Section 5355.
- 19 • The word “amphibia” is replaced with “amphibians.”

20 Article 3. Seizure and Forfeiture

21 § 5400. Seizure of take


22 5400. (a) Any bird, mammal, fish, reptile, aquaculture animal or product, plant,
23 amphibian, or any part thereof, that has been taken, possessed, sold, imported, or
24 transported contrary to any of the laws of this state shall be seized by the
25 department.

26 (b) In accordance with the commission’s regulations, notice of seizure shall be
27 given to the person who had possession of the bird, mammal, fish, reptile,
28 aquaculture animal or product, plant, amphibian, or any part thereof, at the time of
29 the seizure if that person is known.

30 **Comment.** Section 5400 continues former Fish and Game Code Section 12159 without
31 change, except as indicated below:

32 The following nonsubstantive changes are made:

- 33 • Subdivision designations are added.
- 34 • The words “birds,” “mammals,” “fish,” “reptiles,” “aquaculture animals and products,”
35 “plants,” and “amphibians” are singularized.
- 36 • The words “which have” are replaced with “that has.”

37  **Staff Note.** The meaning of the phrase “at the time of the seizure” in proposed Section
38 5400(b) is unclear. Is this language a *timing* requirement (i.e., a requirement that the notice be
39 given “at the time of the seizure”), or is the language meant to more precisely describe the person
40 to whom the notice is to be given (i.e., the person in possession of the item seized “at the time of
41 the seizure”)? **The staff invites comment on this issue.**

1 **§ 5405. Sale or donation of seized take**

2 5405. Any seizure of any bird, mammal, fish, reptile, amphibian, or part thereof
3 made under circumstances wherein it cannot be determined who took, possessed,
4 sold, imported, or transported them contrary to law may be sold or donated to a
5 state, county, city, city and county, or any charitable institution.

6 **Comment.** Section 5405 continues former Fish and Game Code Section 12162 without
7 change, except as indicated below:

8 The following nonsubstantive change is made:

- 9 • The words “birds,” “mammals,” “fish,” “reptiles,” “amphibia” and “parts” are
10 singularized.

11 **§ 5415. Reuse of seized take**

12 5415. All birds, mammals, fish, reptiles, aquaculture animals and products,
13 plants, or amphibians or any part thereof, seized in accordance with Section 5400,
14 the sale of which is not prohibited and that have a current market value of one
15 hundred dollars (\$100) or more, shall be packed, preserved, sold for bait, used for
16 fish food in state-owned fish hatcheries, or otherwise put to economical use
17 immediately upon seizure, at the prevailing market price for legal birds, mammals,
18 fish, reptiles, aquaculture animals and products, plants, amphibians, or part thereof
19 in effect on the date of seizure. Any proceeds thereof shall be placed in the Fish
20 and Game Preservation Fund. If the person from whom the birds, mammals, fish,
21 reptiles, aquaculture animals and products, plants, or amphibians were seized is
22 not convicted in a court of competent jurisdiction for the offense out of which the
23 seizure arose, then and in that event the proceeds shall be returned to that person.

24 **Comment.** Section 5415 continues former Fish and Game Code Section 12160 without
25 change, except as indicated below:

26 The following nonsubstantive changes are made:

- 27 • A cross-reference to former Fish and Game Code Section 12159 is revised to refer to
28 Section 5400.
29 • The word “which” is replaced with “that.”
30 • An omitted reference to “or part thereof” is added to make the section internally
31 consistent.
32 • The word “such” is replaced with “the.”

33 ☞ **Staff Note.** In a staff draft accompanying Memorandum 2013-50, a Staff Note following
34 proposed Section 2650 invited comment on whether references to the “Fish and Game
35 Preservation Fund” should be revised to instead refer to the “Fish and *Wildlife* Preservation
36 Fund.” **Proposed Section 5415 presents this issue.**

37 **§ 5420. Donation or destruction of seized take**

38 5420. The judge before whom any person is tried for taking, possessing, selling,
39 importing, or transporting birds, mammals, fish, reptiles, aquaculture animals and
40 products, plants, or amphibians, or parts thereof, contrary to the laws of this state
41 shall upon the conviction of the accused make an order forfeiting and disposing of
42 the birds, mammals, fish, reptiles, aquaculture animals and products, plants, or
43 amphibians, or parts thereof, in accordance with the provisions of Section 5415.

1 However, if the birds, mammals, fish, reptiles, aquaculture animals and products,
2 plants, or amphibians, or parts thereof, may not be sold lawfully or have a current
3 market value of less than one hundred dollars (\$100), the judge may at his or her
4 discretion order that the birds, mammals, fish, reptiles, aquaculture animals or
5 products, plants, amphibians, or parts thereof, be donated to a state, county, city,
6 or any charitable institution, or be destroyed.

7 **Comment.** Section 5420 continues former Fish and Game Code Section 12161 without
8 change, except as indicated below:

9 The following nonsubstantive changes are made:

- 10 • A cross-reference to former Fish and Game Code Section 12160 is revised to refer to
11 Section 5415.
- 12 • In the second sentence, the word “they” is clarified to refer to “the birds, mammals,
13 fish, reptiles, aquaculture animals or products, plants, amphibians, or parts thereof”
14 referenced earlier in the section.
- 15 • In the second sentence, the superfluous words “that they” are deleted.
- 16 • The phrase “or parts thereof” is set off by commas throughout, for clarity.


17 **§ 5425. Purchase of seized take**

18 5425. Any person who purchases birds, mammals, fish, reptiles, or amphibians,
19 or parts thereof, from the department pursuant to Sections 5405 or 5415 shall upon
20 delivery pay to the department, for deposit in the Fish and Game Preservation
21 Fund, the prevailing market price for legal birds, mammals, fish, reptiles, or
22 amphibians, or parts thereof, in effect on the date of seizure.

23 **Comment.** Section 5425 continues former Fish and Game Code Section 12163 without
24 change, except as indicated below:

25 The following nonsubstantive changes are made:

- 26 • The word “amphibia” is replaced with “amphibians” throughout.
- 27 • A reference to “the preceding sections” is replaced with cross-references to Sections
28 5405 and 5415.
- 29 • A comma is added and two commas are deleted for clarity.
- 30 • The words “delivery to him” are replaced with “delivery.”
- 31 • An omitted reference to “or parts thereof” is added to make the section internally
32 consistent.

33  **Staff Note.** In a staff draft accompanying Memorandum 2013-50, a Staff Note following
34 proposed Section 2650 invited comment on whether references to the “Fish and Game
35 Preservation Fund” should be revised to instead refer to the “Fish and *Wildlife* Preservation
36 Fund.” **Proposed Section 5425 presents this issue.**

37 **§ 5430. Forfeiture of device or apparatus**

38 5430. (a) Except as provided in subdivision (b), the judge before whom any
39 person is tried for a violation of any provision of this code, or regulation adopted
40 pursuant to this code, may, upon the conviction of the person tried, order the
41 forfeiture of any device or apparatus that is designed to be, or is capable of being,
42 used to take birds, mammals, fish, reptiles, or amphibians, and that was used in
43 committing the offense charged.

1 (b) The judge shall, if the offense is punishable under Section **12008** of this code
2 or under subdivision (c) of Section 597 of the Penal Code, order the forfeiture of
3 any device or apparatus that is used in committing the offense, including, but not
4 limited to, any vehicle that is used or intended for use in delivering, importing, or
5 exporting any unlawfully taken, imported, or purchased species.

6 (c)(1) The judge may, for conviction of a violation of any of the following
7 offenses, order forfeiture of any device or apparatus that is used in committing the
8 offense, including, but not limited to, any vehicle used or intended for use in
9 committing the offense:

10 (A) Section 5000 relating to deer, elk, antelope, feral pigs, European wild boars,
11 black bears, and brown or cinnamon bears.

12 (B) Any offense that involves the sale, purchase, or possession of abalone for
13 commercial purposes.

14 (C) Any offense that involves the sale, purchase, or possession of sturgeon or
15 lobster, pursuant to Section **7370 or 8254**.

16 (D) Any offense that involves a violation of Section 5100.

17 (E) A violation of subdivision (b) of Section 5105.

18 (2) In considering an order of forfeiture under this subdivision, the court shall
19 take into consideration the nature, circumstances, extent, and gravity of the
20 prohibited act committed, the degree of culpability of the violator, the property
21 proposed for forfeiture, and other criminal or civil penalties imposed on the
22 violator under other provisions of law for that offense. The court shall impose
23 lesser forfeiture penalties under this subdivision for those acts that have little
24 significant effect upon natural resources or the property of another and greater
25 forfeiture penalties for those acts that may cause serious injury to natural resources
26 or the property of another, as determined by the court. In determining whether or
27 not to order forfeiture of a vehicle, the court shall, in addition to any other relevant
28 factor, consider whether the defendant is the owner of the vehicle and whether the
29 owner of the vehicle had knowledge of the violation.

30 (3) It is the intent of the Legislature that forfeiture not be ordered pursuant to
31 this subdivision for minor or inadvertent violations, as determined by the court.

32 (d) A judge shall not order the forfeiture of a vehicle under this section if there is
33 a community property interest in the vehicle that is owned by a person other than
34 the defendant and the vehicle is the only vehicle available to the defendant's
35 immediate family that may be operated on the highway with a class A, class B, or
36 class C driver's license.

37 (e) Any device or apparatus ordered forfeited shall be sold, used, or destroyed
38 by the department.

39 (f)(1) The proceeds from all sales under this section, after payment of any valid
40 liens on the forfeited property, shall be paid into the Fish and Game Preservation
41 Fund.

42 (2) A lien in which the lienholder is a conspirator is not a valid lien for purposes
43 of this subdivision.

1 (g) The provisions in this section authorizing or requiring a judge to order the
2 forfeiture of a device or apparatus also apply to the judge, referee, or juvenile
3 hearing officer in a juvenile court action brought under Section 258 of the Welfare
4 and Institutions Code.

5 (h) For purposes of this section, a plea of nolo contendere or no contest, or
6 forfeiture of bail, constitutes a conviction.

7 (i) Neither the disposition of the criminal action other than by conviction nor the
8 discretionary refusal of the judge to order forfeiture upon conviction impairs the
9 right of the department to commence proceedings to order the forfeiture of fish
10 nets or traps pursuant to Section **8630**.

11 **Comment.** Section 5430 continues former Fish and Game Code Section 12157 without
12 change, except as indicated below:

13 The following nonsubstantive changes are made:

- 14 • The phrase “pursuant thereto” is replaced with “pursuant to this code.”
- 15 • The word “amphibia” is replaced with “amphibians.”
- 16 • In subdivision (a), a comma is added for clarity.
- 17 • A cross-reference to former Fish and Game Code Section 2000 is revised to refer to
18 Section 5000.
- 19 • A cross-reference to former Fish and Game Code Section 12012 is revised to refer to
20 Section 5100.
- 21 • A cross-reference to former Fish and Game Code Section 12013 is revised to refer to
22 Section 5105.

23 **Staff Notes.** (1) This section authorizes the sale of a forfeited device or apparatus (which may
24 include a vehicle), with the proceeds first applied to satisfy any liens on the device or apparatus.
25 However, a lien held by a “conspirator” is not subject to that rule. The meaning of the term
26 “conspirator” in this context is unclear. This ambiguity could be problematic in at least two ways:
27 (a) If a person can be deemed a “conspirator” without having been convicted of a crime, there
28 could be a taking without due process of law. (b) If the section requires a conviction of the
29 separate crime of conspiracy, then it may not apply in cases where the lien holder is convicted of
30 the offenses referenced in the section. **The staff invites comment on how this aspect of this
31 provision is understood and applied in practice.**

32 (2) In a staff draft accompanying Memorandum 2013-50, a Staff Note following proposed
33 Section 2650 invited comment on whether references to the “Fish and Game Preservation Fund”
34 should be revised to instead refer to the “Fish and *Wildlife* Preservation Fund.” **Proposed Section
35 5430 presents this issue.**

36 § 5435. Forfeiture of vehicle

37 5435. The judge before whom any person is convicted of violating Sections
38 5120 and 5275 and, at the same proceeding, is also convicted of violating Section
39 5015 or 5125 may, in the court’s discretion, order the forfeiture of any motor
40 vehicle or snowmobile used in committing one or more of the offenses charged.
41 Any vehicle so forfeited shall be sold or destroyed by the department. The
42 proceeds from the sale of a forfeited vehicle shall be paid into the Fish and Game
43 Preservation Fund, except that any valid lien on the forfeited property shall first be
44 paid from proceeds of the sale unless the lienholder is a conspirator. For purposes

1 of this section, forfeiture of bail or a plea of nolo contendere shall constitute a
2 conviction.

3 **Comment.** Section 5435 continues former Fish and Game Code Section 12157.5 without
4 change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • The phrase “tried and convicted” is replaced with “convicted.”
- 7 • Cross-references to former Fish and Game Code Sections 2004, 2016, 2001, and 2005
8 are revised, respectively, to refer to Sections 5120, 5275, 5015, and 5125.
- 9 • The word “his” is replaced with “the court’s.”
- 10 • The words “all such sales” are replaced with “the sale of a forfeited vehicle.”
- 11 • The word “liens” is singularized.

12 **Staff Notes.** (1) This section authorizes the sale of a forfeited vehicle, with the proceeds first
13 applied to satisfy any liens on the vehicle. However, a lien held by a “conspirator” is not subject
14 to that rule. The meaning of the term “conspirator” in this context is unclear. This ambiguity
15 could be problematic in at least two ways: (a) If a person can be deemed a “conspirator” without
16 having been convicted of a crime, there could be a taking without due process of law. (b) If the
17 section requires a conviction of the separate crime of conspiracy, then it may not apply in cases
18 where the lien holder is convicted of the offenses referenced in the section. **The staff invites**
19 **comment on how this aspect of this provision is understood and applied in practice.**

20 (2) In a staff draft accompanying Memorandum 2013-50, a Staff Note following proposed
21 Section 2650 invited comment on whether references to the “Fish and Game Preservation Fund”
22 should be revised to instead refer to the “Fish and *Wildlife* Preservation Fund.” **Proposed Section**
23 **5435 presents this issue.**

24 TITLE 2. SPECIAL SEASONS AND LIMITS

25 § 5500. Fire seasons

26 5500. Whenever, because of extreme fire hazard, an area is closed to entry by
27 the public by an order or proclamation issued or concurred in by the Governor, the
28 commission may establish a season for hunting or fishing within the area. The
29 season shall begin on or after the end of the closure, and correspond in length of
30 time as nearly as possible to the amount of time the area was closed to hunting or
31 fishing.

32 **Comment.** Section 5500 continues former Fish and Game Code Section 306 without change,
33 except as indicated below:

34 The following nonsubstantive changes are made:

- 35 • Commas are added for clarity.
- 36 • The words “commence upon” are replaced with “begin on.”
- 37 • The phrase “the expiration or termination of such closure” is replaced with “the end of
38 the closure.”
- 39 • The superfluous words “shall” and “may be” are deleted.
- 40 • The phrase “the time during which such area was closed” is replaced with “the amount
41 of time the area was closed.”

1 § 5505. Reduced limits based on scarcity

2 5505. (a) Whenever after due investigation the commission finds that game fish,
3 resident or migratory birds, game or fur-bearing mammals, amphibians, or reptiles
4 have decreased in numbers in any area, district, or part thereof to the extent that a
5 scarcity exists, the commission may reduce the daily bag limit and the possession
6 limit on those game fish, birds, mammals, amphibians, or reptiles as are in danger
7 of depletion, for a period of time that is specified, or until new legislation
8 addressing the scarcity becomes effective.

9 (b) Any regulation issued under the provisions of this section shall be filed with
10 the Secretary of State, and filing shall be deemed a legal notice thereof.

11 (c) The regulation shall be published twice in at least one newspaper of general
12 circulation in any county affected by the order. The publications shall be separated
13 by a period of not less than one week and not more than two weeks. The
14 regulation shall be posted in any public places in each county that the director may
15 direct.

16 **Comment.** Section 5505 continues former Fish and Game Code Section 307 without change,
17 except as indicated below:

18 The following substantive change is made:

- 19 • Reptiles are added to the list of referenced animals.

20 The following nonsubstantive changes are made:

- 21 • Subdivision designations are added.
22 • The superfluous word “shall” is deleted.
23 • The word “amphibia” is replaced with “amphibians.”
24 • The words “areas” and “districts” are singularized.
25 • The word “portions” is replaced with “part.”
26 • In subdivision (a), the word “such” is replaced with “the” and “those.”
27 • In subdivision (a), the phrase “for such period of time as may be specified or until such
28 time as new legislation thereon enacted by the Legislature may become effective” is
29 replaced with “for a period of time that is specified, or until new legislation addressing
30 the scarcity becomes effective.”
31 • In subdivision (b), the superfluous word “such” is deleted.
32 • In subdivision (c), the word “Such” is replaced with “The.”
33 In subdivision (c), the phrase “such public places in each county as the director may
34 direct” is replaced with “any public places in each county that the director may direct.”

35 **Staff Notes.** (1) Subdivision (a) of existing Section 307 contains a reference to “game fish.”
36 This category of fish is not defined anywhere in the existing code. The term is defined in a
37 regulation, 14 C.F.R. Section 230(b)(1), but only for the purposes of that regulation, which relates
38 to the issuance of permits for contests offering prizes for the taking of such fish. **The staff invites
39 comment on the meaning of “game fish” in this section.**

40 (2) Subdivision (a) also continues a reference in existing Section 307 to “resident or migratory
41 birds.” These categories of birds are not defined in the existing code, but “resident *game* birds”
42 and “migratory *game* birds” are defined in existing Section 3500. **The staff invites comment on
43 the intended meaning of “resident or migratory birds” in this section.**

44 (3) Proposed Section 5505 would include reptiles in the categories of animals referenced in this
45 section. **The staff invites comment on whether this inclusion is appropriate.**

46 (4) Section 307 contains a reference to a time when new legislation enacted by the Legislature
47 “may become effective.” Legislation typically goes “into effect” on January 1 of the year

1 following its enactment. See Government Code Section 9600(a). However, in some situations a
2 statute may nevertheless not become “operative” until some later date, if the enacting legislation
3 provides for a deferred operative date. **The staff invites comment on whether the word**
4 **“effective” should be revised to read “operative.”**

5 (5) A provision of existing Section 307, continued in proposed Section 5505(b), requires that a
6 regulation be filed with the Secretary of State. That requirement appears to be redundant. Existing
7 Section 300 generally requires that “any regulation issued under any subsequent provisions of this
8 code shall be filed with the Secretary of State, as required by Chapter 4 (commencing with
9 Section 11370), Part 1, Division 3, Title 2, of the Government Code.” **The staff invites comment**
10 **on whether the filing requirement in Section 5505(b) can be deleted.**

11 (6) Proposed Section 5505 also provides that the filing of the regulation with the Secretary of
12 State “shall be deemed a legal notice thereof.” The staff is not certain of the meaning of that
13 provision. Moreover, the staff is concerned that this statement could create a problematic negative
14 inference that other regulations filed with the Secretary of State do not create “legal notice” of the
15 regulation. See also, Gov’t Code § 11343.6 (filing regulation with Secretary of State creates
16 rebuttable presumption of regulation’s proper promulgation; courts shall take judicial notice of
17 filed regulation); 11344.6 (publication of regulation in California Regulatory Notice Register
18 creates rebuttable presumption of regulation’s proper promulgation; courts shall take judicial
19 notice of filed regulation). **The staff invites comment on whether the “legal notice” clause of**
20 **Section 5505(b) should be deleted.**

21 TITLE 3. HUNTING AND FISHING GUIDES

22 CHAPTER 1. GUIDES GENERALLY

23 § 5600. “Guide” defined

24 5600. As used in this chapter, “guide” means any person who is engaged in the
25 business of packing or guiding, or who, for a fee, assists another person in taking
26 or attempting to take any bird, mammal, fish, amphibian, or reptile. “Guide” also
27 includes any person who, for profit, transports other persons, their equipment, or
28 both to or from a hunting or fishing area.

29 **Comment.** Section 5600 continues former Fish and Game Code Section 2535 without change.

30 § 5605. Guide license required

31 5605. (a) It is unlawful for any person to engage in the business of guiding or
32 packing, or to act as a guide for any consideration or compensation, without first
33 having secured a guide license from the department.

34 (b) An employee of a licensee who acts as a guide only in connection with, and
35 within the scope of, his or her employment is exempt from the requirement of
36 subdivision (a), if all of the following conditions are met:

37 (1) The employment is subject to, and the person is reported to the carrier of, the
38 employer’s workers’ compensation insurance.

39 (2) The person is subject to, and reported to the state and federal taxing
40 authorities for, withholding of income tax.

1 (3) The person is reported to the department, on forms provided by the
2 department, as an employee of the guide, prior to any contact with any person
3 being guided, and a registration fee has been paid. The base fee for an employee
4 guide registration for the 2004 license year shall be thirty-three dollars (\$33),
5 which shall be adjusted annually thereafter pursuant to Section 2780.

6 (c) A person who is licensed in another state to provide guide services for the
7 purposes of fishing is exempt from the requirements of subdivision (a) if all of the
8 following conditions are met:

9 (1) The state in which the person is licensed grants a similar exemption to
10 licensed guides who are residents of this state.

11 (2) Evidence of a valid guide license is provided to the department upon request.

12 (3) The person is engaged in the business of guiding only in conjunction with
13 and during the term of a multistate fishing tournament approved by the appropriate
14 agency in each of the affected states.

15 (4) The tournament sponsor provides to the department any information or
16 documents necessary to administer and enforce this paragraph, as determined by
17 the department, including, but not limited to, the identities of all guides
18 participating in the tournament, verification of another state's license exemption,
19 and information sufficient to determine the validity of another state's guide
20 licenses.

21 (5) The tournament sponsor pays the department an amount, determined by the
22 department, to be sufficient to cover the department's cost to administer and
23 enforce this subdivision.

24 (6) The net proceeds of the tournament are used for resource management
25 projects or habitat improvement projects, or both.

26 (d) The commission shall adjust the amount of the fees specified in paragraph
27 (3) of subdivision (b), as necessary, to fully recover, but not exceed, all reasonable
28 administrative and implementation costs of the department and the commission
29 relating to those licenses.

30 **Comment.** Section 5605 continues former Fish and Game Code Section 2536 without change,
31 except as indicated below:

32 The following nonsubstantive changes are made:

- 33 • In subdivision (a), the word "whatever" is deleted as superfluous.
- 34 • In subdivision (b), commas are added for clarity.
- 35 • In subdivision (b), the words "If the" at the beginning of each paragraph are deleted as
36 superfluous.
- 37 • Stylistic changes are made to paragraphs (1) and (2) of subdivision (b).
- 38 • In subdivision (b)(3), a cross-reference to former Fish and Game Code Section 713 is
39 revised to refer to Section 2780.

40 § 5610. Exception

41 5610. A person operating under a commercial passenger fishing boat license
42 issued pursuant to Section 7920 is not required to obtain a guide license.

43 **Comment.** Section 5610 continues former Fish and Game Code Section 2537 without change.

1 **§ 5615. Grazing permit required**

2 5615. If the licensee operates with pack or riding animals in any area in which a
3 grazing permit is required, the license is not valid unless the licensee has a valid
4 grazing permit for the area. A licensee shall not guide clients on any land under
5 the jurisdiction of the United States Department of the Interior or Department of
6 Agriculture where a permit is required without first obtaining the permit from that
7 federal agency.

8 **Comment.** Section 5615 continues former Fish and Game Code Section 2539 without change,
9 except as indicated below:

10 The following nonsubstantive changes are made:

- 11 • The words “holder thereof” are replaced with “licensee.”
12 • The words “lands” and “permits” singularized.

13 **§ 5620. Regulations**

14 5620. The commission shall adopt regulations governing the conduct and
15 qualifications of guides to ensure the safety and welfare of persons engaging the
16 services of a guide, and may adopt regulations governing the procedures for
17 applications for guide licenses. The qualifications shall include, but not be limited
18 to, knowledge of basic first aid and rescue operations.

19 **Comment.** Section 5620 continues former Fish and Game Code Section 2542 without change.

20 **§ 5625. Records**

21 5625. The commission may require licensed guides to maintain and submit
22 records of their operations. The records may be examined at any time by
23 representatives of the department. It is unlawful for any licensed guide to fail to
24 maintain or submit any required record or to refuse to allow the examination of a
25 record on request of a department representative.

26 **Comment.** Section 5625 continues former Fish and Game Code Section 2543 without change,
27 except as indicated below:

28 The following nonsubstantive changes are made:

- 29 • The word “records” is singularized.
30 • The words “upon the” are replaced with “on.”

31 **CHAPTER 2. LICENSE APPLICATION**

32 **§ 5700. Information required**

33 5700. An application for a guide license shall be on a form furnished by the
34 department on request. The application shall show all of the following:

- 35 (a) The name, date of birth, physical description, age, address, and telephone
36 number, if any, of the applicant.
37 (b) The area or areas of the state in which the applicant proposes to operate.
38 (c) The type of guiding or packing in which the applicant proposes to engage.

1 (d) The experience that qualifies the applicant for the type of guiding or packing
2 he or she proposes to conduct.

3 (e) The type and amount of the equipment, vehicles, animals, and other property
4 the applicant proposes to use in his or her operations.

5 (f) Any other information that the department or the commission may require.

6 **Comment.** Section 5700 continues former Fish and Game Code Section 2538 without change,
7 except as indicated below:

8 The following nonsubstantive change is made:

- 9
 - The word “which” is replaced with “that.”

10 **§ 5705. License fee**

11 5705. (a) The base fee for a guide license issued to a resident is one hundred
12 fifty dollars (\$150).

13 (b) The base fee for a guide license issued to a nonresident is three hundred fifty
14 dollars (\$350).

15 (c) The base fees specified in this section are applicable to the 2004 license year,
16 and shall be adjusted annually thereafter pursuant to Section 2780.

17 (d) The commission shall adjust the amount of the fees specified in this section,
18 as necessary, to fully recover, but not exceed, all reasonable administrative and
19 implementation costs of the department and the commission relating to those
20 licenses.

21 **Comment.** Section 5705 continues subdivisions (a), (b), (d), and (e) of former Fish and Game
22 Code Section 2540 without change, except as indicated below:

23 The following nonsubstantive changes are made:

- 24
 - Subdivision designations are revised based on the continuation of subdivision (c) of
25 former Fish and Game Code Section 2540 in Section 5710.
 - A cross-reference to former Fish and Game Code Section 713 is revised to refer to
26 Section 2780.
 - In subdivision (d), cross-references to subdivisions in former Fish and Game Code
27 Section 2540 are revised to refer to “this section.”

30 **§ 5710. License duration**

31 5710. A guide license is valid for the license year beginning on February 1 and
32 ending on January 31 of the succeeding year or, if issued after the beginning of the
33 license year, for the remainder of that license year.

34 **Comment.** Section 5710 continues subdivision (c) of former Fish and Game Code Section
35 2540 without change.

36 **§ 5715. Surety bond**

37 5715. Each applicant for a guide license shall submit proof of having obtained a
38 surety bond in the amount of not less than one thousand dollars (\$1,000),
39 conditioned on faithful performance of the guide and his or her agents or
40 employees in fulfilling their responsibilities to their clients. No guide license shall
41 be issued to any applicant who does not submit proof of having a bond that is valid
42 for the term of the license.

1 **Comment.** Section 5715 continues former Fish and Game Code Section 2541 without change,
2 except as indicated below:

3 The following nonsubstantive changes are made:

- 4 • A comma is added for clarity.
- 5 • The words “which shall insure faithful performance” is replaced with “conditioned on
6 faithful performance.”
- 7 • The word “which” is replaced with “that.”

8 **Staff Note.** The language used in existing Section 5715 to describe the purpose of the surety
9 bond referenced in the section is non-standard. Proposed Section 5715 would conform the
10 language to that used in more recently enacted provisions. See, e.g., Fin. Code § 12104(g), Health
11 and Safety Code § 1376(b), Rev. & Tax. Code § 30165.1(b)(4)(B). **The staff invites comment**
12 **on whether this revision is appropriate.**

13 **§ 5720. Grounds for refusal of license**

14 5720. The department may refuse to issue a guide license to an applicant upon a
15 showing of any of the following:

- 16 (a) The applicant has failed to fulfill his responsibilities to a client.
- 17 (b) The applicant has violated this code or any regulation adopted pursuant to
18 this code, or has knowingly permitted a client or another member of a party being
19 guided to violate this code or any regulation adopted pursuant to this code, and the
20 applicant had the authority and means to prevent the violation.

21 **Comment.** Section 5720 continues former Fish and Game Code Section 2544 without change,
22 except as indicated below:

23 The following nonsubstantive change is made:

- 24 • The words “pursuant thereto” are replaced with “pursuant to this code.”

25 **§ 5725. Appeal of refusal**

26 5725. An applicant denied a guide license by the department may request a
27 hearing before the commission and the commission shall determine whether or not
28 the license shall be issued.

29 **Comment.** Section 5725 continues former Fish and Game Code Section 2545 without change.

30 **CHAPTER 3. LICENSE REVOCATION**

31 **§ 5800. Commission revocation of guide license**

32 5800. The commission may revoke a guide license or the privilege to guide upon
33 a showing of any of the following:

- 34 (a) The licensee has been convicted of a violation of this code or any regulation
35 adopted pursuant to this code.
- 36 (b) The licensee has knowingly permitted a client or other member of the party
37 being guided to violate this code or any regulation adopted pursuant to this code,
38 and that the licensee had the authority and means to prevent the violation.
- 39 (c) The licensee has failed to fulfill his or her responsibilities to a client.

1 **Comment.** Section 5800 continues former Fish and Game Code Section 2546 without change,
2 except as indicated below:

3 The following nonsubstantive change is made:

- 4 • The words “pursuant thereto” are replaced with “pursuant to this code.”

5 **§ 5805. Court revocation of guide license**

6 5805. (a) When any person licensed as a guide under Section 5605 is found
7 guilty by a court of competent jurisdiction of violating or permitting the violation
8 of any provision of this code or regulation made pursuant to this code, the court, in
9 addition to any fine or other punishment imposed, may revoke the person’s guide
10 license.

11 (b) Any person who obtains another guide license within two years after a guide
12 license issued to that person has been revoked or forfeited is guilty of a
13 misdemeanor.

14 **Comment.** Section 5805 continues former Fish and Game Code Section 12165 without
15 change, except as indicated below:

16 The following nonsubstantive changes are made:

- 17 • Subdivision designations are added.
18 • A cross-reference to former Fish and Game Code Section 2536 is revised to refer to
19 Section 5605.
20 • The word “adjudged” is replaced with “found.”
21 • The words “pursuant thereto” are replaced with “pursuant to this code.”
22 • A stylistic change is made to the wording of subdivision (a).
23 • The section is made gender-neutral.
24 • In subdivision (b), a comma is deleted for clarity.

25 **§ 5810. Court revocation of privilege to hunt, fish, or guide**

26 5810. (a) The judge before whom any guide, as defined in Section 5600, is
27 arraigned for a violation of this code, or regulation adopted pursuant to this code,
28 may, upon the conviction of the person, order the revocation of the person’s
29 privilege to hunt, fish, or guide for a period not to exceed three years from the date
30 of the conviction.

31 (b) For purposes of this section, a plea of nolo contendere or no contest or a
32 forfeiture of bail is a conviction.

33 (c) It shall be unlawful for any person to obtain, or attempt to obtain a guide
34 license, sportfishing license, or hunting license during a period of revocation
35 imposed under this section.

36 (d) Neither the disposition of the criminal action other than by conviction nor
37 the discretionary refusal of the judge to order revocation upon conviction impairs
38 the right of the department to commence proceedings to order revocation of the
39 guide license pursuant to Section 5800.

40 **Comment.** Section 5810 continues former Fish and Game Code Section 12156.5 without
41 change, except as indicated below:

42 The following nonsubstantive changes are made:

- 43 • A cross-reference to former Fish and Game Code Section 2535 is revised to refer to
44 Section 5600.

- The words “pursuant thereto” are replaced with “pursuant to this code.”
- A cross-reference to former Fish and Game Code Section 2546 is revised to refer to Section 5800.

TITLE 4. LIFETIME LICENSES

§ 5900. Issuance of lifetime licenses

5900. (a) In addition to Section **3031**, **3031.2**, **7149**, **7149.05**, or **7149.2** and notwithstanding Section **3037**, the department shall issue lifetime sport fishing and hunting licenses pursuant to this section. A lifetime sport fishing and hunting license authorizes the taking of birds, mammals, fish, reptiles, or amphibians anywhere in this state, in accordance with law for purposes other than profit, for the life of the licensee, unless revoked for a violation of this code or a regulation adopted pursuant to this code. A lifetime sport fishing and hunting license is not transferable. A lifetime sport fishing and hunting license does not include any special tags, stamps, or other entitlements.

(b) A lifetime sport fishing and hunting license may be issued to a resident, as follows:

(1) To a person 62 years of age or over, upon payment of a base fee of seven hundred thirty dollars (\$730).

(2) To a person 40 years of age or over and less than 62 years of age, upon payment of a base fee of one thousand eighty dollars (\$1,080).

(3) To a person 10 years of age or over and less than 40 years of age, upon payment of a base fee of one thousand two hundred dollars (\$1,200).

(4) To a person less than 10 years of age, upon payment of a base fee of seven hundred thirty dollars (\$730).

(c) This section does not require a person less than 16 years of age to obtain a license to take fish, reptiles, or amphibians for purposes other than profit, or to obtain a license to take birds or mammals, except as required by law.

(d) This section does not exempt an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sport hunting or sport fishing.

(e) Upon payment of a base fee of four hundred forty-five dollars (\$445), a person holding a lifetime hunting license or sport fishing and hunting license shall be issued annually one deer tag application pursuant to subdivision (a) of Section **4332** and five wild pig tags issued pursuant to Section **4654**. Lifetime privileges issued pursuant to this subdivision are not transferable.

(f) Upon payment of a base fee of two hundred ten dollars (\$210), a person holding a lifetime hunting license or sport fishing and hunting license shall be entitled annually to the privileges afforded to a person holding a state duck stamp or validation issued pursuant to Section **3700** or **3700.1** and an upland game bird

1 stamp or validation issued pursuant to Section **3682 or 3682.1**. Lifetime privileges
2 issued pursuant to this subdivision are not transferable.

3 (g) The base fees specified in this section are applicable commencing January 1,
4 2004, and shall be adjusted annually thereafter pursuant to Section 2780.

5 (h) The commission shall adjust the amount of the fees specified in subdivision
6 (g), as necessary, to fully recover, but not exceed, all reasonable administrative
7 implementation costs of the department and the commission relating to those
8 licenses.

9 (i) For purposes of this section, “person” includes any individual, firm,
10 association, organization, partnership, business, trust, corporation, limited liability
11 company, company, district, city, county, city and county, town, the state, and any
12 of the agencies of those entities.

13 **Comment.** Subdivisions (a) through (h) of Section 5900 continue former Fish and Game Code
14 Section 714 without change, except as indicated below:

15 The following nonsubstantive changes are made:

- 16 • The term “sportsman’s license” is replaced with “sport fishing and hunting license.”
- 17 • The word “amphibia” is replaced with “amphibians.”
- 18 • In subdivisions (a)-(c), commas are added for clarity.
- 19 • The words “regulations” and “residents” are singularized.
- 20 • In subdivision (a), the phrase “person to whom issued” is replaced with “licensee.”
- 21 • A cross-reference to former Fish and Game Code Section 713 is revised to refer to
22 Section 2780.

23 Subdivision (i) of Section 5900 continues former Fish and Game Code Section 711.2(b)
24 without change, except as indicated below:

25 The following nonsubstantive change is made:

- 26 • The term “article” is replaced with “section.”

27 **§ 5905. Deposit of fees from lifetime licenses**

28 5905. (a) Notwithstanding Section 2700 and 2810, the fees collected from
29 lifetime sport fishing and hunting licenses and privileges issued pursuant to
30 Section 5900, lifetime hunting licenses and privileges issued pursuant to Section
31 **3031.2**, and lifetime sport fishing licenses and privileges issued pursuant to
32 Section **7149.2** shall be deposited as follows:

33 (1) Twenty dollars (\$20) from the initial issuance of each lifetime license shall
34 be deposited in the Fish and Game Preservation Fund for use in accordance with
35 Section 2615.

36 (2) The balance of the fees collected shall be deposited in the Lifetime License
37 Trust Account that is hereby created in the Fish and Game Preservation Fund.
38 Except as provided in this section, that principal amount of the money in the
39 account from the fee for a lifetime license shall not be used, except for investment.

40 (b) The money in the Lifetime License Trust Account may be transferred and
41 invested through the Surplus Money Investment Fund and all interest shall accrue
42 to the account pursuant to subdivision (g) of Section 16475 of the Government
43 Code.

1 (c) Upon issuance of a lifetime license or lifetime privilege issued pursuant to
2 Section 5900, 3031.2, or 7149.2, the department shall transfer the following
3 amounts from the Lifetime License Trust Account to the Fish and Game
4 Preservation Fund:

5 (1) Twenty-nine dollars and twenty-five cents (\$29.25) for an annual resident
6 hunting license or an annual resident sport fishing license.

7 (2) Seven dollars and twenty-five cents (\$7.25) for a junior hunting license.

8 (3) Nine dollars and twenty-five cents (\$9.25) for one second-rod stamp or
9 validation issued pursuant to Section 7149.4 or Section 7149.45.

10 (4) Two dollars and fifty cents (\$2.50) for one sport fishing ocean enhancement
11 stamp or validation issued pursuant to subdivision (a) of Section **6596 or**
12 **subdivision (a) of Section 6596.1.**

13 (5) Three dollars and fifty cents (\$3.50) for one Bay-Delta sport fishing
14 enhancement stamp or validation issued pursuant to Section **7360 or Section**
15 **7360.1.**

16 (6) Three dollars and seventy-five cents (\$3.75) for one steelhead trout catch
17 report-restoration card issued pursuant to Section **7380.**

18 (7) One dollar (\$1) for one salmon punchcard issued pursuant to regulations
19 adopted by the commission.

20 (8) Nineteen dollars and twenty-five cents (\$19.25) for a deer tag application
21 issued pursuant to subdivision (a) of Section **4332.**

22 (9) Eight dollars and seventy-five cents (\$8.75) for five wild pig tags issued
23 pursuant to Section **4654.**

24 (10) Ten dollars (\$10) for one state duck stamp or validation issued pursuant to
25 Section **3700 or 3700.1.**

26 (11) Six dollars and twenty-five cents (\$6.25) for one upland game bird stamp or
27 validation issued pursuant to Section **3682 or 3682.1.**

28 **Comment.** Section 5905 continue former Fish and Game Code Section 13005 without change,
29 except as indicated below:

30 The following nonsubstantive changes are made:

- 31 • A cross-reference to former Fish and Game Code Section 13001 is revised to refer to
32 Sections 2700 and 2810.
- 33 • A cross-reference to former Fish and Game Code Section 711 is revised to refer to
34 Section 2615.
- 35 • The term “sportsman’s license” is replaced with “sport fishing and hunting license.”
- 36 • Cross-references to former Fish and Game Code Section 714 are revised to refer to
37 Section 5900.
- 38 • The word “which” is replaced with “that.”

39 **Staff Note.** In a staff draft accompanying Memorandum 2013-50, a Staff Note following
40 proposed Section 2650 invited comment on whether references to the “Fish and Game
41 Preservation Fund” should be revised to instead refer to the “Fish and *Wildlife* Preservation
42 Fund.” **Proposed Section 5905 presents this issue.**

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>
306	5500	2542	5620
307	5505	2543	5625
711.2(b).....	5900(i)	2544	5720
714	5900(a)-(h)	2545	5725
2000	5000	2546	5800
2000.5	5005	12012	5100
2001	5015	12013(a)-(b),(d)-(g).....	5105
2002	5010	12013(c),(g).....	5110
2003	5115	12154	5355
2004	5120	12155.5	5365
2005	5125	12156.5	5810
2009	5130	12157	5430
2014	5300	12157.5	5435
2015	5140	12158	5350
2018	5135	12159	5400
2535	5600	12160	5415
2536	5605	12161	5420
2537	5610	12162	5405
2538	5700	12163	5425
2539	5615	12165	5805
2540(a)-(b),(c)-(e).....	5705	12166	5360
2540(c)	5710	13005	5905
2541	5715		