

Memorandum 2014-38

**Fish and Game Law:
Proposed Division 5, Part 2, Title 2 (Birds)**

The Commission¹ is presently studying a proposed recodification of the Fish and Game Code.² The Commission has provisionally decided to divide the program-specific content of the new proposed Fish and Wildlife Code along these lines:

Division 5. Hunting, Fishing, and Other Public Use
Part 1. General Provisions
Part 2. Hunting
Title 1. General Provisions
Title 2. Birds
Title 3. Mammals
....
Division 6. Biodiversity
Division 7. Management of Public Lands and Facilities
Division 8. Pollution Prevention and Response
Division 9. Miscellaneous Provisions³

A staff draft of Title 1 of Part 2 of Division 5 (“General Provisions”), containing generally applicable hunting provisions, was presented at the Commission’s April 2014 meeting.⁴ This memorandum presents provisions that would be contained in Title 2 of that same part (“Birds”), for public review and comment.

Consistent with previous practice in this study, 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

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

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

2. See Memorandum 2012-41.

3. See Minutes (Dec. 2013), p. 14.

4. See Memorandum 2014-18.

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 some instances, the staff has proposed to significantly restate an existing provision, in order to improve its clarity. In those instances, a “Staff Note” following the restated provision sets out the existing language for comparison. The draft also includes Staff Notes that invite public comment on other questions about the meaning, effect, expression, or organization of the law. Staff Notes are intended to be temporary, and will not be included in any final recommendation.

Consistent with the general practice in this study, the staff is not yet recommending that the draft language be approved for inclusion in a tentative recommendation. Instead, we are presenting it for an initial evaluation by the Commission and as a prompt for public comment. Once the Commission has had a chance to offer any concerns or suggestions about the draft and consider any public comment that we might eventually receive, we will present the language in a more finished form, reflecting any decisions that the Commission has made, for inclusion in a tentative recommendation.

CONTENT OF DRAFT

The provisions in the attached draft are mostly drawn from Part 2 (commencing with Section 3500) of Division 4 of the Fish and Game Code.

As indicated, the content in the attached draft would be located in proposed Division 5, which governs “Hunting, Fishing, and Other Public Uses.” Bird-related provisions that do not primarily relate to hunting will be located elsewhere in the proposed code. Such provisions include:

- Section 3516 (inspection of imported game birds)
- Section 3802 (cooperative contracts with United States Fish and Wildlife Service relating to predatory birds)
- Section 3803 (Department take of predatory birds)
- Chapter 4 (commencing with Section 3850) of Part 2 of Division 4 (California condor preservation project)

ORGANIZATION

The title in the attached draft is divided into ten chapters, as listed below. Following an initial chapter containing general provisions, each subsequent chapter relates to a described category of bird.

- Chapter 1. General Provisions
- Chapter 2. Migratory Birds Generally
- Chapter 3. Game Birds
 - Article 1. General Provisions
 - Article 2. Ducks and Geese
 - Article 3. Upland Game Birds
 - Article 4. Domesticated Migratory Game Birds
 - Article 5. Exotic Nonresident Game Birds
- Chapter 4. Nongame Birds
 - Article 1. Taking and Possession
 - Article 2. Nongame Bird Parts
 - Article 3. Specific Nongame Birds
- Chapter 5. Birds of Prey
- Chapter 6. Fully Protected Birds

NEW DEFINITIONS

In the course of analyzing existing code provisions relating to birds, the staff has identified a handful of bird-related definitions that appear to have general application throughout the code. For that reason, the staff proposes to add these provisions to Chapter 2 (“Definitions”) of Division 1 (“General Provisions”) of the proposed Fish and Wildlife Code.

These definitions, with accompanying Commission Comments and in some cases Staff Notes, appear below.

§ 192. “Exotic nonresident game bird”

192. “Exotic nonresident game bird” means a bird of the order Galliformes (pheasant, grouse, quail) that is not established as a wild resident population in this state.

Comment. Section 192 continues former Fish and Game Code Section 3514 without change, except as indicated below:

The following nonsubstantive changes are made:

- Quotation marks are added to the term “exotic nonresident game birds.”
- The words “are those birds” are replaced with “means a bird.”
- The word “birds” is singularized.
- The words “which are” is replaced with “that is.”
- The word “State” is replaced with “state.”

 **Staff Note.** It is unclear whether the parenthetical in existing Section 3514 “(pheasant, grouse, quail)” is meant to be merely illustrative, or is intended as a substantive limitation on the types of birds that are included in the definition of “exotic nonresident game birds.”

The order Galliformes includes a number of types of birds that are not listed in the parenthetical (e.g., partridges, turkeys, ptarmigans, guineafowl). If nonresident varieties of those types of birds were introduced into California, would they be within the scope of the definition?

The staff invites comment on this issue.

§ 202. “Fully protected bird”

202. “Fully protected bird” means any of the following birds:

- (a) American peregrine falcon (*Falco peregrinus anatum*).
- (b) Brown pelican.
- (c) California black rail (*Laterallus jamaicensis coturniculus*).
- (d) California clapper rail (*Rallus longirostris obsoletus*).
- (e) California condor (*Gymnogyps californianus*).
- (f) California least tern (*Sterna albifrons browni*).
- (g) Golden eagle.
- (h) Greater sandhill crane (*Grus canadensis tabida*).
- (i) Light-footed clapper rail (*Rallus longirostris levipes*).
- (j) Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).
- (k) Trumpeter swan (*Cygnus buccinator*).
- (l) White-tailed kite (*Elanus leucurus*).
- (m) Yuma clapper rail (*Rallus longirostris yumanensis*).

Comment. Section 202 continues former Fish and Game Code Section 3511(b) without change, except as indicated below:

The following nonsubstantive changes are made:

- Quotation marks are added to the term “fully protected birds.”
- The words “The following are” are replaced with “means any of the following birds.”
- Paragraph designations are changed to subdivision designations.
- The word “birds” is singularized.

§ 203. “Game bird”

203. “Game bird” means a resident game bird or a migratory game bird.

Comment. Section 203 continues former Fish and Game Code Section 3500(c) without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “References in this code to ‘game birds’” are replaced with “‘Game bird’ means.”
- The word “both” is deleted as superfluous.
- The word “and” is replaced with “or.”

- The word “birds” is singularized.
- (3) For compensation, to assist another person in locating any bird or mammal.

Comment. Section 203 continues former Fish and Game Code Section 46 without change.

§ 227. “Migratory game bird”

227. “Migratory game bird” means any of the following birds:

- (a) Band-tailed pigeons.
- (b) Coots.
- (c) Ducks.
- (d) Gallinules.
- (e) Geese.
- (f) Jacksnipe.
- (g) Western mourning doves.
- (h) White-winged doves.

Comment. Section 227 continues former Fish and Game Code Section 3500(b) without change, except as indicated below:

The following nonsubstantive changes are made:

- Quotation marks are added to the term “Migratory game birds.”
- The word “birds” is singularized.
- The words “are as follows” are replaced with “means any of the following birds.”
- Paragraph designations are changed to subdivision designations.
- Ducks and geese are listed in separate paragraphs.
- Coots and gallinules are listed in separate paragraphs.
- The listed birds are alphabetized.

§ 237. “Nongame bird”

237. “Nongame bird” means a bird occurring naturally in California that is not a resident game bird, migratory game bird, or fully protected bird.

Comment. Section 237 continues former Fish and Game Code Section 3800(a) without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “All birds” are replaced with ““Nongame bird means a bird.”
- The word “birds” is singularized.
- The words “are nongame birds” at the end of the provision are deleted as superfluous.

§ 282. “Resident game bird”

282. “Resident game bird” means any of the following birds:

- (a) Doves of the genus *Streptopelia*, including, but not limited to, spotted doves, ringed turtledoves, and Eurasian collared-doves.
- (b) California quail and varieties thereof.
- (c) Gambel's or desert quail.
- (d) Hungarian partridges.
- (e) Mountain quail and varieties thereof.
- (f) Red-legged partridges including the chukar and other varieties.
- (g) Ring-necked pheasants and varieties thereof.
- (h) Ruffed grouse.
- (i) Sage hens or sage grouse.
- (j) Sooty or blue grouse and varieties thereof.
- (k) Wild turkeys.

Comment. Section 282 continues former Fish and Game Code Section 3500(a) without change, except as indicated below:

The following nonsubstantive changes are made:

- Quotation marks are added to the term "Resident game birds."
- The word "birds" is singularized.
- The words "are as follows" are replaced with "means any of the following birds."
- Paragraph designations are changed to subdivision designations.
- Coots and gallinules are listed in separate paragraphs.
- In subdivision (k), the words "of the order Galliformes" are deleted as superfluous.
- The listed birds are alphabetized.

Staff Note. Existing Fish and Game Code Section 3500(a)(11) lists "wild turkeys of the order Galliformes" as a resident game bird. It is the staff's understanding that all wild turkeys are of the order Galliformes, making the reference to the order superfluous. The staff also notes that existing Section 3683(a)(12), which identifies those resident game birds that constitute upland game birds, refers only to "wild turkeys."

The staff invites public comment on whether the proposed revision to proposed Section 282(k) is appropriate.

§ 312. "Upland game bird"

312. "Upland game bird" means any of the following birds:

- (a) Band-tailed pigeons.
- (b) California quail and varieties thereof.
- (c) Doves of the genus *Streptopelia*, including, but not limited to, spotted doves, ringed turtledoves, and Eurasian collared doves.
- (d) Gambel's or desert quail.
- (e) Hungarian partridges.
- (f) Jacksnipe.
- (g) Mountain quail and varieties thereof.
- (h) Red-legged partridges including the chukar and other varieties.

- (i) Ring-necked pheasants and varieties thereof.
- (j) Ruffed grouse.
- (k) Sage hens or sage grouse.
- (l) Sooty or blue grouse.
- (m) Western mourning doves.
- (n) White-tailed ptarmigan.
- (o) White-winged doves.
- (p) Wild turkeys.

Comment. Section 312 continues former Fish and Game Code Section 3683 without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “Upland game bird species” are replaced with “Upland game bird.”
- The word “includes both of the following:” are replaced with “means any of the following birds.”
- The words “All of the following resident game birds” are deleted.
- The words “All of the following migratory game birds” are deleted.
- The listed birds are alphabetized.

Staff Notes. (1) Existing Fish and Game Code Section 3683 separately lists the upland game birds that are resident game birds, and those that are migratory game birds. Proposed Section 312 would list all upland game birds without indicating whether a listed bird was a resident or migratory game bird.

The staff invites comment on whether that revision is appropriate.

(2) Existing Fish and Game Code Section 3683(a)(8) identifies a white-tailed ptarmigan as a resident game bird that is also an upland game bird. However, existing Section 3500, which identifies resident game birds, does not list any ptarmigan as a resident game bird.

The staff invites public comment on this apparent discrepancy, and the proper classification of the white-tailed ptarmigan.

Does the Commission approve placement of these definitional provisions in Chapter 2 (“Definitions”) of Division 1 (“General Provisions”) of the proposed Fish and Wildlife Code?

CONCLUSION

The attached draft represents an initial attempt to consolidate provisions of the existing Fish and Game Code that relate to the hunting of birds. 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 the title presented in this draft.

The staff welcomes public comment on all issues raised in the 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.⁵ Because the Commission is new to fish and game law, it is important that subject matter experts assist in identifying such problems as the Commission proceeds through the code.

Respectfully submitted,

Steve Cohen
Staff Counsel

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

FISH AND WILDLIFE CODE

Staff Note: This is a preliminary staff draft of a proposed reorganization of specified provisions of the former 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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TITLE 2 . BIRDS

CHAPTER 1. GENERAL PROVISIONS

§ 7000. Bird nest or eggs

7000. (a) It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as provided by this code or any regulation adopted pursuant to this code.

(b) Except as provided in Section 12001, the punishment for a violation of this section is a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.

Comment. Subdivision (a) of Section 7000 continues former Fish and Game Code Section 3503 without change, except as indicated below:

The following nonsubstantive changes are made:

- The word “otherwise” is deleted as superfluous.
- The phrase “regulation made pursuant thereto” is replaced with “regulation adopted pursuant to this code.”

Subdivision (b) continues the part of former Fish and Game Code Section 12002(c) applicable to former Fish and Game Code Section 3503 without change, except as indicated below:

The following nonsubstantive changes are made:

- The word “specified” is replaced with “provided.”
- Cross-references to former Fish and Game Code Sections 3503 and 12001 are updated.
- A cross-reference to former Fish and Game Code Section 12010 is deleted.

Staff Note. Existing Section 12002(c), which would be continued in part by proposed Section 7000(b), provides as follows:

“Except as specified in Sections 12001 and 12010, the punishment for violation of Section 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.”

However, Section 12010 addresses only the maximum punishment for a violation of existing Section 3503.5 (governing the taking or possession of birds of prey). **The reference to existing Section 12010 has therefore been deleted from proposed Section 7000(b).**

§ 7005. Sale or purchase of game or nongame bird

7005. Subject to the provisions of this code permitting the sale of domestically raised game birds, it is unlawful to sell or purchase any game bird or nongame bird.

Comment. Section 7005 continues former Fish and Game Code Section 3504 without change, except as indicated below:

The following nonsubstantive change is made:

- A reference to a “part” of a bird is deleted as superfluous. See Section 95 (reference to animal generally includes part of animal).

1 CHAPTER 2. MIGRATORY BIRDS GENERALLY

2 § 7100. Taking

3 7100. Migratory game birds may be taken in conformity with the federal laws
4 and regulations and the regulations of the commission adopted pursuant to this
5 chapter.

6 **Comment.** Section 7100 continues the first paragraph of former Fish and Game Code Section
7 356 without change, except as indicated below:

8 The following nonsubstantive change is made:

- 9 • The words “as provided in Section 355” are replaced with “pursuant to this chapter.”

10  **Staff Note.** The cross-reference to regulations of the Commission “as provided in Section
11 355” has been updated to refer to Commission regulations adopted pursuant to the chapter as a
12 whole. This would include regulations adopted pursuant to existing Section 356 (proposed
13 Section 7710), which also govern the take of migratory game birds.

14 **The staff invites comment on whether this revision is appropriate.**

15 § 7105. Commission regulations relating to Migratory Bird Treaty Act

16 7105. (a) The commission may annually adopt regulations pertaining to
17 migratory birds to conform with or to further restrict the rules and regulations
18 prescribed pursuant to the Migratory Bird Treaty Act.

19 (b) Regulations adopted under this section are not subject to Sections 11343.4,
20 11346.1, 11346.4, and 11346.8 of the Government Code.

21 **Comment.** Section 7105 continues the first and second paragraphs of former Fish and Game
22 Code Section 355 without change, except as indicated below:

23 The following nonsubstantive changes are made:

- 24 • Subdivision designations are added.
25 • Two commas are deleted as superfluous.

26 § 7110. Commission regulation in the absence of federal regulation

27 7110. In the event no regulations are prescribed by the proper federal agency,
28 the commission may determine and fix the area or areas, the seasons and hours,
29 the species, the bag and possession limits, and the total number that may be taken
30 during any open season for the taking of migratory game birds, under such rules
31 and regulations as the commission may prescribe. Such rules and regulations as
32 the Commission may prescribe shall have the same effect as if enacted by the
33 Legislature.

34 **Comment.** Section 7110 continues the second paragraph of former Fish and Game Code
35 Section 356 without change.

36  **Staff Notes.** (1) The meaning of “such rules and regulations” in the last sentence of this
37 section is unclear. Does it include only those regulations adopted under existing Section 356? Or
38 does it also include regulations adopted under existing Section 355? **The staff invites comment**
39 **on the issue.**

40 (2) Once the meaning of “such rules and regulations” is clarified, the reference to “rules” will
41 be deleted as redundant. The staff sees no authority for the Commission to adopt “rules” that are
42 not “regulations.” See also Gov’t Code § 11340.5 (barring “rules” that are not properly

1 promulgated regulations). The staff will also delete the word “such” and replace it with suitable
2 alternatives.

3 (3) The intended effect of the last sentence of existing Section 356 is also unclear. Is the
4 provision intended to delegate lawmaking power to the Fish and Game Commission, pursuant to
5 Article 4, Section 20 of the California Constitution? That provision states that “The Legislature
6 may delegate to the commission such powers relating to the protection and propagation of fish
7 and game as the Legislature sees fit.” Given the unusual nature of this provision in Section 356,
8 and its possible validation by the California Constitution, the staff is reluctant to disturb the
9 statutory language (except perhaps to clarify its scope). **Nonetheless, comment on the meaning
10 and effect of the provision would be helpful.**

11 **§ 7115. Effective date of regulation**

12 7115. Every regulation of the commission adopted pursuant to this chapter shall
13 become effective upon filing unless otherwise specified in the regulation.

14 **Comment.** Section 7115 continues the third paragraph of former Fish and Game Code Section
15 355 without change, except as indicated below:

16 The following nonsubstantive changes are made:

- 17 • The word “article” is replaced with “chapter.”
- 18 • The words “shall be filed with the Secretary of State” are deleted as superfluous.
- 19 • The word “regulations” is singularized.

20 **Staff Note.** The requirement that every regulation of the Commission adopted pursuant to the
21 article containing existing Section 355 be filed with the Secretary of State is deleted as
22 superfluous. See existing Section 300 (which would be continued by proposed Section 800).

23 **§ 7120. President as ex officio member of Migratory Bird Conservation Commission**

24 7120. The president of the commission may be a member ex officio of the
25 Migratory Bird Conservation Commission created by the act of Congress known
26 as the “Migratory Bird Conservation Act.”

27 **Comment.** Section 7120 continues former Fish and Game Code Section 357 without change.

28 CHAPTER 3. GAME BIRDS

29 Article 1. General Provisions

30 **§ 7200. Use of mammal to assist taking**

31 7200. It is unlawful to use any mammal (except a dog) or an imitation of a
32 mammal as a blind in approaching or taking a game bird.

33 **Comment.** Section 7200 continues former Fish and Game Code Section 3502 without change.

34 **Staff Note.** The provision above appears to govern the use of an animal (or imitation animal)
35 as a “blind” for taking game birds. The staff is familiar with hunting blinds that are used to
36 conceal hunters and their dogs from their prey, but has not found information discussing using an
37 animal *as* a blind. Is the meaning of this usage understood in the hunting community, or is the
38 provision worded in a confusing way? **The staff invites comment on the issue.**

1 § 7205. Use of vehicle to assist taking

2 7205. It is unlawful to use a powerboat, motor vehicle, or airplane to drive a
3 game bird toward another person, with the intent that the other person take the
4 bird.

5 **Comment.** Section 7205 continues former Fish and Game Code Section 3501 without change,
6 except as indicated below:

7 The following nonsubstantive changes are made:

- 8 • The word “any” is replaced with “a.”
- 9 • A comma is added for clarity.
- 10 • The word “shall” is deleted as superfluous.

11 § 7210. Use of dog during closed season

12 7210. It is unlawful to break, train, hold field trials with, or practice dogs on any
13 wild game bird or domesticated game bird during the closed season for that bird,
14 except as authorized by the commission.

15 **Comment.** Section 7210 continues former Fish and Game Code Section 3508 without change,
16 except as indicated below:

17 The following nonsubstantive changes are made:

- 18 • The word “on” is replaced with “for.”
- 19 • A comma is added for clarity.

20 **Staff Note.** The terms “wild game bird” and “domesticated game bird” are not defined in the
21 existing Fish and Game Code. **Do these two terms together comprise the entire universe of**
22 **game birds, such that the language of proposed Section 7210 could be made applicable to**
23 **any “game bird”?**

24 § 7215. Game bird club license

25 7215. In order to provide additional hunting by stocking domestically
26 propagated game birds, and to permit the taking of game birds under conditions
27 that will not conflict with the public interest, any person who owns or controls the
28 hunting rights on a tract of land may apply to the department for a game bird club
29 license authorizing the taking of game birds upon that land in accordance with the
30 regulations of the commission for the administration, including the
31 implementation and enforcement, of this section.

32 **Comment.** Section 7215 continues former Fish and Game Code Section 3270(a) without
33 change.

34 **Staff Note.** Existing Section 3270(b), identifying the operative date of the section as July 1,
35 1995, is deleted as obsolete.

36 Article 2. Ducks and Geese

37 § 7300. Ducks and geese

38 7300. (a) It is unlawful for any person, except a person licensed pursuant to
39 paragraph (2) of subdivision (a) of Section 6255, to take a duck or goose without
40 obtaining and possessing at the time of taking a state duck stamp, as provided in
41 Section 7310, or a state duck hunting validation as provided in Section 7315.

(b) In addition to any other penalty or fine imposed pursuant to this code, if a person has been convicted of one or more offenses that was a violation of subdivision (a) separate from the offense before the court, the court may order as a condition of probation upon conviction of the offense before the court that is also a violation of subdivision (a) that the person attend the hunter education course designated in Section 6405 and perform community service, preferably relating to natural resources if that type of community service is available, as follows:

(1) If the person has one separate conviction, not more than 200 hours of community service.

(2) If the person has two or more separate convictions, not more than 300 hours of community service.

Comment. Subdivision (a) of Section 7300 restates former Fish and Game Code Sections 3700(a) and 3700.1(a) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 12001.5, as applicable to a violation of former Fish and Game Code Section 3700, without change, except as indicated below:

The following substantive change is made:

- The provision is made equally applicable to a taking in violation of former Fish and Game Code Section 3700.1, as specified.

The following nonsubstantive change is made:

- Cross-references to former Fish and Game Code Sections 3051 and 12001.5(b) are updated.

Staff Notes. (1) Existing Sections 3700 and 3700.1 apply to the taking of “any migratory game bird, except jacksnipe, coots, gallinules, western mourning doves, white-winged doves, and band-tailed pigeons.” Existing Section 3500(b) identifies the birds that constitute “migratory game birds,” and excepting the birds listed in Sections 3700 and 3700.1, the only remaining migratory game birds are ducks and geese. Based on this authority, the application of proposed Section 7150 has been simplified to apply only to the taking of ducks and geese.

The staff invites comment on whether this simplification is appropriate.

(2) Subdivision (a) of proposed Section 7300 is intended to combine and restate existing Sections 3700(a) and Section 3700.1(a), to improve the clarity of those provisions without changing their substantive effect. The existing provisions read as follows:

3700. (a) It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 3031, to take any migratory game bird, except jacksnipe, coots, gallinules, western mourning doves, white-winged doves, and band-tailed pigeons, without first procuring either an open edition or a Governor’s edition state duck stamp, as provided in subdivisions (b) and (c), and having the state duck stamp in his or her possession while taking those birds.

3700.1. (a) It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 3031, to take any migratory game bird, except jacksnipe, coots, gallinules, western mourning doves, white-winged doves, and band-tailed pigeons, without first procuring a state duck hunting validation as provided in subdivision (b), and having that validation in his or her possession while taking those birds.

The staff invites comment on whether the proposed restatement would cause any substantive change in the meaning of these provisions.

(3) Existing Section 12001.5, which is continued in part by proposed Section 7300(b), expressly applies to violations of existing Section 3700, which prohibits the taking of a duck or goose without obtaining and possessing at the time of taking a required state duck stamp.

1 Proposed Section 7300(b) would make the provisions of former Section 12001.5 equally
2 applicable to a taking in violation of existing Section 3700.1, which prohibits the taking of a duck
3 or goose without obtaining and possessing at the time of taking a required state duck validation.

4 **The staff invites comment on whether that revision is appropriate.**

5 (4) It is the staff's understanding that authority to take ducks and geese is now available solely
6 by obtaining a duck validation through the Automated License Data System. If so, that would
7 render language in this article relating to duck stamps as authority to hunt ducks or geese
8 obsolete. (Language relating to duck stamps as collectible items would remain relevant.)

9 **The staff invites comment on whether the staff's understanding is correct, and if so**
10 **whether this provision and others in this article referencing duck stamps as authority to**
11 **hunt ducks or geese should be revised to delete those references.**

12 **§ 7305. Taking in District 8 or 9**

13 7305. (a) In Districts 1780 and 1785, it is unlawful to take a duck or a goose
14 below the incoming or outgoing tidewater's edge, or from any blind, boat, floating
15 device, island, islet, or exposed tidal flat, except as provided in subdivision (b).

16 (b) Subdivision (a) does not apply to either of the following:

17 (1) The taking of a duck or goose on a Saturday, Sunday, Wednesday, holiday,
18 or the opening or closing days of the prescribed open season.

19 (2) The retrieving of a crippled or dead duck or goose by use of a boat.

20 **Comment.** Section 7305 restates former Fish and Game Code Section 3681 without
21 substantive change.

22 **Staff Note.** Proposed Section 7305 is intended to restate existing Section 3681 to improve its
23 clarity, without changing its substantive effect. The existing section reads as follows:

24 "3681. In Districts 8 and 9, it is unlawful to take ducks or geese in any manner below the
25 incoming or outgoing tidewater's edge or from any blind, boat, floating device, island, islet, or
26 exposed tidal flat except on Saturdays, Sundays, Wednesdays, holidays and the opening and
27 closing days during the prescribed open season except that the use of boats is permitted to retrieve
28 crippled or dead birds."

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

31 **§ 7310. State duck stamp**

32 7310. (a) A state duck stamp, open edition, shall be sold for a fee of ten dollars
33 (\$10) by the department and by license agents, who are authorized by the
34 department pursuant to subdivision (a) of Section 2400, in the same manner as
35 hunting licenses.

36 (b) A state duck stamp, Governor's edition, may be printed and sold on a bid
37 basis, beginning at a minimum bid, as determined by the department or its
38 representative.

39 (c) The commission shall determine the form of the state duck stamp.

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

42 **Comment.** Section 7310 continues former Fish and Game Code Section 3700(b), (c), (d), and
43 (f) without change, except as indicated below:

44 The following nonsubstantive changes are made:

- The word “stamps” is singularized.
- A cross-reference to former Fish and Game Code Section 1055 is updated.

Staff Notes. Existing Section 3700(b) (subdivision (b) of this section) and existing Section 3700.2(d) (proposed Section 7320(d)), both provide that Governor’s edition state duck stamps “may be printed and sold on a bid basis, beginning at a minimum bid.” The staff is not sure what is meant by “sold on a bid basis.” **The staff invites comment on the issue.**

§ 7315. State duck hunting validation

7315. (a) A state duck hunting validation shall be sold for a fee of ten dollars (\$10) by the department and by license agents, who are authorized by the department pursuant to subdivision (a) of Section 2425, in the same manner as hunting licenses.

(b) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

Comment. Section 7315 continues former Fish and Game Code Section 3700.1(b) and (c) without change, except as indicated below:

The following nonsubstantive changes are made:

- The word “validation” is singularized.
- A cross-reference to former Fish and Game Code Section 1055.1 is updated.

§ 7320. Collectible state duck stamp

7320. (a) Upon full implementation of the Automated License Data System, the department shall continue to prepare, or have prepared, collectible state duck stamps depicting migratory waterfowl.

(b) Any person who obtains a duck hunting validation pursuant to Section 7315 is entitled, upon request, to receive a collectible state duck stamp, open edition, at no additional charge.

(c) Any person may purchase a collectible state duck stamp, open edition, for a fee of ten dollars (\$10).

(d) A collectible state duck stamp, Governor’s edition, may be printed and sold on a bid basis, beginning at a minimum bid, as determined by the department or its representative.

(e) The commission shall determine the form of the collectible state duck stamp.

(f) Possession of a collectible state duck stamp obtained pursuant to this section does not entitle the holder to take a duck or goose.

Comment. Section 7320 continues former Fish and Game Code Section 3700.2(a)-(f) without change, except as indicated below:

The following substantive change is made:

- The phrase “state duck stamp” is replaced throughout with the phrase “collectible state duck stamp,” to distinguish a duck stamp issued pursuant to this section from a duck stamp issued pursuant to Section 7310.

The following nonsubstantive changes are made:

- The word “stamps” is singularized.
- A cross-reference to former Fish and Game Code Section 3700.1 is updated.
- The words “any migratory bird, as defined in Section 3700.1” is replaced with “a duck or goose.”

1 **☞ Staff Notes.** In order to clarify that state duck stamps issued pursuant to this section in
2 conjunction with the Department’s Duck Stamp Art Program are distinguishable from duck
3 stamps that authorize the taking of migratory game birds, the staff proposes that stamps issued
4 pursuant to this section be identified as “collectible” state duck stamps. **The staff invites**
5 **comment on whether that designation would be problematic.**

6 **§ 7325. Promotional material**

7 7325. (a) The department may prepare and sell artwork, posters, and other
8 promotional materials related to the sale of duck stamps or waterfowl hunting and
9 conservation.

10 (b) The department may permit individual artists to sell a limited number of
11 prints of duck stamp related artwork or posters.

12 **Comment.** Subdivision (a) of Section 7325 continues former Fish and Game Code Section
13 3700(e) and 3700.2(g) without change.

14 Subdivision (b) continues the first paragraph of former Fish and Game Code Section 3702.5
15 without change.

16 **☞ Staff Note.** The second sentence of existing Section 3702.5, identifying the operative date of
17 that section as July 1, 1993, is deleted as obsolete.

18 **§ 7330. State Duck Stamp Account**

19 7330. All funds derived from the sale of state duck hunting validations, state
20 duck stamps, and related items authorized by subdivision (a) of Section 7325, shall
21 be deposited in the State Duck Stamp Account in the Fish and Game Preservation
22 Fund to permit separate accountability for the receipt and expenditure of these
23 funds.

24 **Comment.** Section 7330 continues the first sentence of former Fish and Game Code Section
25 3701 without change, except as indicated below:

26 The following nonsubstantive changes are made:

- 27 • Cross-references to former Fish and Game Code Sections 3700(e) and 3700.2(g) are
28 updated.
- 29 • The word “and” is replaced with a comma.

30 **§ 7335. Allocation of funds in State Duck Stamp Account**

31 7335. Funds deposited in the State Duck Stamp Account shall be allocated as
32 follows:

33 (a) An amount not to exceed 6 percent of the amount annually deposited in the
34 account may be used for administrative overhead related to the use of those funds
35 and for implementation of the federal Migratory Bird Harvest Program.

36 (b) Two dollars and twenty-five cents (\$2.25) of the amount collected by the
37 department for each state duck stamp or state duck validation sold shall be
38 allocated by the commission for the purposes of the North American Waterfowl
39 Management Plan, in those areas of Canada from which substantial numbers of
40 waterfowl migrate to or through California. These funds shall be matched with
41 federal or private funds available for that purpose.

1 (c) The available balance of the funds shall be used for any project authorized
2 pursuant to Section 7340 in California.

3 **Comment.** Subdivision (a) of Section 7335 continues the second sentence of former Fish and
4 Game Code Section 3701 without change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • The introductory clause “Funds deposited in the State Duck Stamp Account shall be
7 allocated as follows:” is added.

8 Subdivision (b) continues the first and second sentences of the first paragraph of former Fish
9 and Game Code Section 3704 without change, except as indicated below:

10 The following substantive change is made:

- 11 • The provision is made applicable to the sale of state duck validations as well as the sale
12 of state duck stamps.

13 The following nonsubstantive changes are made:

- 14 • The word “come” is deleted as superfluous.
- 15 • The words “migrating to, or through,” are replaced with “migrate to or through.”

16 Subdivision (c) continues the third sentence of the first paragraph of former Fish and Game
17 Code Section 3704 without change, except as indicated below:

18 The following nonsubstantive change is made:

- 19 • A cross-reference to former Fish and Game Code Section 3702 is updated.

20 **Staff Notes.** (1) When existing Section 3704 was enacted in 1992, authority to hunt ducks
21 and geese was provided solely through the issuance of duck stamps. However, beginning in 2001
22 this authority also became available through the sale of electronic duck “validations,” and it is the
23 staff’s understanding that these validations have largely or entirely replaced the use of stamps. In
24 order to reflect that administrative change, the reference to revenue from duck stamp sales was
25 generalized, in proposed Section 7335(b), to include revenue from validation sales. **The staff**
26 **invites comment on whether this would cause any problems.**

27 (2) Existing Section 3704 includes a sentence restricting the use of “the available balance of
28 the funds” to specified projects in California. Because that sentence is in a section that discusses
29 the funds from duck stamp sales specifically, it is not entirely clear that the reference includes *all*
30 funds in the Duck Stamp Account (which includes revenue from art sales and the sale of
31 validations). Proposed Section 7335 is drafted so as to eliminate that ambiguity (i.e., the provision
32 would govern all funds in the account). **The staff invites comment on whether this would**
33 **cause any problems.**

34 (3) The second paragraph of existing Section 3704, identifying the operative date of that
35 section as July 1, 1993, is deleted as obsolete.

36 **§ 7340. Use of funds**

37 7340. Funds deposited in the State Duck Stamp Account shall be used for
38 projects or endowments approved by the commission for the purpose of
39 protecting, preserving, restoring, enhancing, and developing migratory waterfowl
40 breeding and wintering habitat, evaluating habitat projects, and conducting
41 waterfowl resource assessments and other waterfowl related research.

42 **Comment.** Section 7340 continues the first sentence of former Fish and Game Code Section
43 3702 without change.

1 § 7345. Acquired lands

2 7345. Any land acquired in California with funds deposited in the State Duck
3 Stamp Account shall be open to waterfowl hunting as a public shooting ground or
4 wildlife management area.

5 **Comment.** Section 7345 continues the last sentence of the first paragraph of former Fish and
6 Game Code Section 3704 without change, except as indicated below:

7 The following nonsubstantive changes are made:

- 8 • The word “However” is deleted as superfluous.
- 9 • The words “those funds” are replaced with “funds deposited in the State Duck Stamp
10 Account.”
- 11 • The word “lands” is singularized.

12 § 7350. Grant to or contract with nonprofit organization

13 7350. The department may make a grant to or enter into a contract with a
14 nonprofit organization for the use of funds deposited in the State Duck Stamp
15 Account, if both of the following conditions are satisfied:

16 (a) The department finds that the grant or contract is necessary for carrying out
17 the purposes of this article.

18 (b) The entity in control of any property affected by a project approves the grant
19 or contract.

20 **Comment.** Section 7350 combines and restates the third sentence of former Fish and Game
21 Code Section 3702, and a portion of the second sentence of former Fish and Game Code Section
22 3704.5, without substantive change.

23 **Staff Note.** Proposed Section 7350 is intended to combine and restate the third sentence of
24 existing Section 3702, and a portion of the second sentence of existing Section 3704.5, both of
25 which authorize the Department to make specified uses of funds in the State Duck Stamp
26 Account, without changing their substantive effect.

27 The restated sentences, in their existing sections, are shown in italics below:

28 “3702. Funds deposited in the State Duck Stamp Account shall be used for projects or
29 endowments approved by the commission for the purpose of protecting, preserving, restoring,
30 enhancing, and developing migratory waterfowl breeding and wintering habitat, evaluating
31 habitat projects, and conducting waterfowl resource assessments and other waterfowl related
32 research. These funds may be used to reimburse nonprofit organizations for completed habitat
33 projects. *Subject to Section 3704, the department may make grants or enter into contracts with
34 nonprofit organizations for the use of these funds when it finds that the contracts are necessary
35 for carrying out the purposes of this article.*”

36 “3704.5. Waterfowl projects authorized pursuant to Sections 3702 and 3460 are not subject to
37 Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6
38 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.
39 *With the approval of the entity in control of property affected by a project, the department may
40 make grants to, or enter into contracts with, nonprofit organizations for the accomplishment of
41 those projects, or the department may reimburse the controlling entity for its costs of
42 accomplishing the project.*”

43 **The staff invites comment on whether the restatement substantively changes either of the
44 italicized provisions.**

1 § 7355. Reimbursement

2 7355. The department may use funds deposited in the State Duck Stamp
3 Account for reimbursement in either of the following circumstances:

4 (a) To reimburse a nonprofit organization for a completed habitat project.

5 (b) To reimburse the entity in control of property affected by a project, for its
6 costs of accomplishing the project.

7 **Comment.** Section 7355 combines and restates the second sentence of former Fish and Game
8 Code Section 3702, and a portion of the second sentence of former Fish and Game Code Section
9 3704.5, without substantive change.

10 **Staff Note.** Proposed Section 7355 is intended to combine and restate the third sentence of
11 existing Section 3702, and the second sentence of existing Section 3704.5, both of which
12 authorize the Department to make specified uses of funds in the State Duck Stamp Account,
13 without changing their substantive effect.

14 The sentences in the existing sections are italicized below, and read as follows:

15 “3702. Funds deposited in the State Duck Stamp Account shall be used for projects or
16 endowments approved by the commission for the purpose of protecting, preserving, restoring,
17 enhancing, and developing migratory waterfowl breeding and wintering habitat, evaluating
18 habitat projects, and conducting waterfowl resource assessments and other waterfowl related
19 research. *These funds may be used to reimburse nonprofit organizations for completed habitat*
20 *projects.*”

21 “3704.5. Waterfowl projects authorized pursuant to Sections 3702 and 3460 are not subject to
22 Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6
23 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.
24 With the approval of the entity in control of property affected by a project, the department may
25 make grants to, or enter into contracts with, nonprofit organizations for the accomplishment of
26 those projects, or *the department may reimburse the controlling entity for its costs of*
27 *accomplishing the project.*”

28 **The staff invites comment on whether the restatement substantively changes any aspect of**
29 **either of the italicized provisions.**

30 § 7360. Project prerequisites

31 7360. (a) Before the commission may consider any project that proposes the use
32 of funds from the State Duck Stamp Account, the department shall analyze the
33 project and provide the commission with recommendations as to the project’s
34 feasibility and need.

35 (b) Before allocating funds to any project to be undertaken outside the state, or
36 outside the United States, the commission shall secure evidence that the project is
37 acceptable to the government agency having jurisdiction over the lands and waters
38 affected by the project.

39 **Comment.** Subdivision (a) of Section 7360 continues former Fish and Game Code Section
40 3703 without change, except as indicated below:

41 The following nonsubstantive changes are made:

- 42 • The word “which” is replaced with “that.”
- 43 • The word “such” is replaced with “the.”

44 Subdivision (b) continues former Fish and Game Code Section 3705 without change, except as
45 indicated below:

46 The following nonsubstantive change is made:

- The word “such” is replaced with “the.”

§ 7365. Non-applicability of other statutory requirements

7365. Waterfowl projects authorized pursuant to Section 7340 are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

Comment. Section 7365 continues the part of the first sentence of the first paragraph of former Fish and Game Code Section 3704.5 applicable to former Fish and Game Code Section 3702 without change, except as indicated below:

The following nonsubstantive change is made:

- A cross-reference to former Fish and Game Code Section 3702 is updated.

Staff Notes. (1) The first sentence of existing Section 3704.5 refers to two types of projects — those authorized under this article and those authorized under existing Section 3460 (the California Waterfowl Habitat Program). The latter reference was not continued in proposed Section 7365, because Section 3460 does not directly relate to hunting. The staff intends to continue Section 3460 elsewhere in the code (probably with other provisions governing habitat conservation programs). A provision equivalent to proposed Section 7365, but applicable to existing Section 3460, will be added at that time.

(2) The second paragraph of existing Section 3704.5, identifying the operative date of the section as July 1, 1993, is deleted as obsolete.

Article 3. Upland Game Birds

§ 7400. Taking

7400. It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 6255, to take any upland game bird species without first procuring an upland game bird stamp or validation, and having the stamp or validation permanently affixed to that person’s valid hunting license.

Comment. Section 7400 combines and restates former Fish and Game Code Sections 3682(a) and 3682.1(a) without substantive change.

Staff Notes. (1) Proposed Section 7400 is intended to combine and restate existing Sections 3682(a) and Section 3682.1(a), to improve the clarity of those provisions without changing their substantive effect. The existing provisions read as follows:

3682. (a) It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 3031, to take any upland game bird species without first procuring an upland game bird stamp, and having the stamp permanently affixed to his or her valid hunting license.

3682.1. (a) It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 3031, to take any upland game bird species without first procuring an upland game bird hunting validation, as provided in subdivision (b), and having the validation affixed to his or her valid hunting license.

The staff invites comment on whether the proposed restatement would cause any substantive change in the meaning of these provisions.

(2) The staff invites comment on whether authority to take upland game birds is now available solely through validations issued through the Automated License Data System,

1 **thereby rendering language throughout this article relating to issuing upland game bird**
2 **stamps as authority to hunt upland game birds obsolete.**

3 **§ 7405. Upland game bird stamp**

4 7405. (a) An upland game bird stamp may be obtained from the department, or a
5 licensed agent authorized pursuant to subdivision (a) of Section 2400, for a fee of
6 six dollars and twenty-five cents (\$6.25), adjusted pursuant to Section 713.

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

9 **Comment.** Section 7405 continues former Fish and Game Code Section 3682(b) and (c)
10 without change, except as indicated below:

11 The following nonsubstantive changes are made:

- 12 • The word “stamps” is singularized.
- 13 • A cross-reference to former Fish and Game Code Section 1055 is updated.

14 **§ 7410. Upland game bird validation**

15 7410. (a) An upland game bird hunting-validation may be obtained from the
16 department or a licensed agent authorized pursuant to subdivision (a) of Section
17 2425 for a fee of six dollars and twenty-five cents (\$6.25), adjusted pursuant to
18 Section 713.

19 (b) This section applies only to licenses, permits, reservations, tags, and other
20 entitlements issued through the Automated License Data System.

21 **Comment.** Section 7410 continues former Fish and Game Code Section 3682.1(b) and (c)
22 without change, except as indicated below:

23 The following nonsubstantive changes are made:

- 24 • The word “validations” is singularized.
- 25 • A cross-reference to former Fish and Game Code Section 1055.1 is updated.

26 **§ 7415. Collectible upland game bird stamp**

27 7415. (a) Upon full implementation of the Automated License Data System, the
28 department shall continue to prepare, or have prepared, collectible upland game
29 bird stamps depicting upland game birds.

30 (b) Any person who obtains an upland game bird hunting validation pursuant to
31 Section 7410 is entitled, upon request, to receive a collectible upland game bird
32 stamp at no additional charge.

33 (c) Any person may purchase a collectible upland game bird stamp for a fee of
34 six dollars and twenty-five cents (\$6.25), as adjusted pursuant to Section 2780.

35 (d) Possession of a collectible upland game bird stamp obtained pursuant to this
36 section does not entitle the holder to take any upland game bird species.

37 **Comment.** Section 7415 continues former Fish and Game Code Section 3682.2 without
38 change, except as indicated below:

39 The following substantive change is made:

- 40 • The phrase “upland game bird stamp” is replaced throughout with the phrase
41 “collectible upland game bird stamp,” to distinguish an upland game bird stamp issued
42 pursuant to this section from an upland game bird stamp issued pursuant to Section
43 7405.

1 The following nonsubstantive change is made:

- 2 • Cross-references to former Fish and Game Code Sections 713 and 3682.1 are updated.

3 **Staff Note.** In order to clarify that upland game bird stamps issued pursuant to this section in
4 conjunction with the Department’s Upland Game Bird Art Program are distinguishable from
5 upland game bird stamps that authorize the taking of upland game birds, the staff proposes that
6 the stamps issued pursuant to this section be identified as “collectible” upland game bird stamps.
7 **The staff invites comment on whether that designation would be problematic.**

8 **§ 7420. Upland Game Bird Account**

9 7420. (a) The Upland Game Bird Account is hereby established within the Fish
10 and Game Preservation Fund.

11 (b) All funds derived from the sale of upland game bird hunting validations and
12 upland game bird stamps shall be deposited in the Upland Game Bird Account to
13 permit separate accountability for the receipt and expenditure of these funds.

14 (c) The department shall maintain the internal accountability necessary to ensure
15 compliance with the collection, deposit, and expenditure of funds specified in this
16 section.

17 (d) Funds deposited in the Upland Game Bird Account shall be available for
18 expenditure upon appropriation by the Legislature to the department.

19 (e) The department shall post budget information and a brief description on its
20 Internet Web site for all projects funded from the Upland Game Bird Account.

21 **Comment.** Subdivision (a) of Section 7420 continues former Fish and Game Code Section
22 3684(a) without change.

23 Subdivision (b) continues former Fish and Game Code Section 3684(b) without change.

24 Subdivision (c) continues former Fish and Game Code Section 3684(g) without change.

25 Subdivision (d) continues the first sentence of former Fish and Game Code Section 3684(c)
26 without change.

27 Subdivision (e) continues the last sentence of former Fish and Game Code Section 3684(e)
28 without change.

29 **§ 7425. Use of funds**

30 7425. (a) Funds deposited in the Upland Game Bird Account shall be expended
31 solely for the purpose of acquiring land, completing projects and implementing
32 programs to benefit upland game bird species, and expanding public hunting
33 opportunities and related public outreach, including, but not limited to, enhancing
34 upland game bird habitat.

35 (b) Notwithstanding subdivision (a), the department may also use funds from the
36 Upland Game Bird Account to pay for administrative and enforcement costs of the
37 programs and activities described in this section. The amount allocated from the
38 account for administrative costs shall be limited to the reasonable costs associated
39 with administration of the programs and activities described in this section.

40 (c) Projects authorized pursuant to this section are governed by **Section 1501.5**.

41 **Comment.** Subdivision (a) of Section 7425 continues the second sentence of former Fish and
42 Game Code Section 3684(c) without change, except as indicated below:

43 The following nonsubstantive change is made:

- The words “These funds” are replaced with “Funds deposited in the Upland Game Bird Account.”

Subdivision (b) continues the fourth and fifth sentences of former Fish and Game Code Section 3684(c) without change, except as indicated below:

The following nonsubstantive change is made:

- The words “Notwithstanding subdivision (a)” are added to the beginning of the provision.

Subdivision (c) continues the first sentence of former Fish and Game Code Section 3686 without change, except as indicated below:

The following nonsubstantive change is made:

- Cross-references to former Fish and Game Code Sections 1501.5 and 3684 are updated.

§ 7430. Acquired land

7430. Any land acquired with funds from the Upland Game Bird Account shall be acquired in fee title or protected with a conservation easement and, to the extent possible, be open or provide access to the public for upland game bird hunting.

Comment. Section 7430 continues the third sentence of former Fish and Game Code Section 3684(c) without change.

§ 7435. Involvement with nonprofit organization

7435. (a) The department may make a grant to, reimburse, or enter into a contract or other agreement as defined in **subdivision (a) of Section 1571** with, a nonprofit organization for the use of the funds from the Upland Game Bird Account to carry out the purposes of Section 7425, including related habitat conservation projects.

(b) With the approval of the entity in control of property affected by a project, the department may make a grant to, or enter into a contract with, a nonprofit organization for the accomplishment of the project.

Comment. Subdivision (a) of Section 7435 continues former Fish and Game Code Section 3684(d) without change, except as indicated below:

The following nonsubstantive change is made:

- Cross-references to former Fish and Game Code Section 1571(a) and 3684 are updated.

Subdivision (b) continues the first portion of the second sentence of former Fish and Game Code Section 3686 without change, except as indicated below:

The following nonsubstantive change are made:

- The words “grants,” “contracts,” and “organization” are singularized.
- The words “those projects” are replaced with “the project.”

§ 7440. Reimbursement

7440. If a project affects property, the department may reimburse the entity in control of the property for its costs of accomplishing the project.

Comment. Section 7440 restates a portion of the second sentence of former Fish and Game Code Section 3686 without substantive change.

Staff Note. Proposed Section 7440 is intended to restate a portion of the second sentence of existing Section 3686 without changing its substantive effect.

The portion of the sentence that is restated is italicized below, and reads as follows:

1 “3686. Projects authorized pursuant to Section 3684 shall be governed by Section 1501.5. With
2 the approval of the entity in control of property affected by a project, the department may make
3 grants to, or enter into contracts with, nonprofit organizations for the accomplishment of those
4 projects, *or the department may reimburse the controlling entity for its costs of accomplishing the*
5 *project.*”

6 **The staff invites comment on whether the restatement substantively changes the italicized**
7 **provision.**

8 **§ 7445. Review by advisory committee**

9 7445. An advisory committee, as determined by the department, that includes
10 interested nonprofit organizations that have goals and objectives directly related to
11 the management and conservation of game bird species and primarily represent the
12 interests of persons licensed pursuant to Section 6255 shall review and provide
13 comments to the department on all proposed projects funded from the Upland
14 Game Bird Account to help ensure that the requirements of this section have been
15 met.

16 **Comment.** Section 7445 continues the first sentence of former Fish and Game Code Section
17 3684(e) without change, except as indicated below:

18 The following nonsubstantive change is made:

- 19
 - A cross-reference to former Fish and Game Code Section 3031 is updated.

20 **§ 7450. Non-applicability of other statutory requirements**

21 7450. Upland game bird projects authorized pursuant to Section 7425 are not
22 subject to Part 2 (commencing with Section 10100) of Division 2 of the Public
23 Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of
24 Division 4 of the Military and Veterans Code.

25 **Comment.** Section 7450 continues subdivision (f) of former Fish and Game Code Section
26 3684 without change, except as indicated below:

27 The following nonsubstantive change is made:

- 28
 - A cross-reference to former Fish and Game Code Section 3684 is updated.

29 **§ 7455. Pheasants**

30 7455. (a) It is unlawful to take a pheasant within 300 yards of a vehicle from
31 which pheasants are being released into an area for hunting, while the pheasants
32 are being released.

33 (b) It is unlawful to possess a pheasant carcass, in a condition that the sex or
34 species of the pheasant cannot be easily determined, while in the field or forest or
35 while upon any highway, train, car, boat, or other conveyance when returning
36 from any hunting trip with gun or other hunting equipment.

37 **Comment.** Subdivision (a) of Section 7455 continues former Fish and Game Code Section
38 3010 without change, except as indicated below:

39 The following nonsubstantive changes are made:

- 40
 - The phrase “for any person” is deleted as superfluous.
 - 41 • The word “any” is replaced with “a.”
 - 42 • A comma is added for clarity.
 - 43 • The word “such” is replaced with “the.”

1 Subdivision (b) continues former Fish and Game Code Section 3660 without change, except as
2 indicated below:

3 The following nonsubstantive changes are made:

- 4 • The phrase “for any person” is deleted as superfluous.
- 5 • The words “to have in his possession the carcass, in such condition that the sex or
6 species cannot be easily determined, of any pheasant “ are replaced with “to possess a
7 pheasant carcass in a condition that the sex or species of the pheasant cannot be easily
8 determined.”

9 Article 4. Domesticated Migratory Game Birds

10 § 7500. Raising and releasing

11 7500. (a) It is unlawful to raise and release, or release, domesticated migratory
12 game birds for shooting by a person paying for that privilege, without a revocable
13 nontransferable license issued by the department pursuant to Section 7505.

14 (b) For purposes of this section, a “domesticated migratory game bird” is a
15 migratory game bird held live in captivity at or after six weeks of age.

16 **Comment.** Subdivision (a) of Section 7500 restates the first sentence of the first paragraph of
17 former Fish and Game Code Section 3300 without substantive change.

18 Subdivision (b) restates the second paragraph of former Fish and Game Code Section 3300
19 without substantive change.

20  **Staff Notes.** (1) The provisions in this article generally continue the provisions in Article 4
21 (commencing with Section 3300) of Chapter 2 of Part 1 of Division 4 of the existing Fish and
22 Game Code. Provisions in that article regulate two types of licensed activity — raising and
23 releasing domesticated migratory game birds, and shooting the released birds. Some provisions in
24 the article, including the first sentence of the first paragraph of existing Section 3300, refer to a
25 “license” or “licensee” without being clear about the type of license at issue. Is it a reference to a
26 license to raise and release, or a license to shoot?

27 For example, the first sentence of Section 3300 reads as follows:

28 “It is unlawful for any person to engage in the raising and releasing, or the releasing, of
29 domesticated migratory game birds for shooting by persons who pay for that privilege, unless the
30 person has a revocable nontransferable license issued by the department.”

31 Based on a reading of the entire article, the staff believes that the sentence is referring to a
32 license to raise and release, and has restated the provision to clarify that meaning. **The staff
33 invites comment on whether the proposed restatement would cause any substantive change
34 in the meaning of the provision.**

35 Similar clarifying language is added throughout the article. See, in particular, proposed
36 Sections 7515, 7530, 7545, and 7570. **The staff invites comment on whether those revisions
37 would cause any unintended substantive changes.**

38 (2) Subdivision (b) of proposed Section 7350 is intended to restate the second paragraph of
39 existing Section 3300 to improve its clarity, without changing its substantive effect. The existing
40 provision reads as follows:

41 “Any bird of a species included in the definition of migratory game birds, as defined in Section
42 3500, which has been held live in captivity is a “domesticated migratory game bird” for purposes
43 of this section, except such a bird that has been released from captivity and any control before
44 attaining six weeks of age.”

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

(3) The second paragraph of existing Section 3300 defines a “domesticated migratory game bird” for purposes of “this section.” However, the term “domesticated migratory game bird” is used elsewhere in the existing Fish and Game Code, with no corresponding definition. See existing Sections 3031, 3200, 3216, 3240.5. **Should this definition be made applicable to the code generally, and included with the general definitions in the first division of the proposed law?**

§ 7505. License to raise and release

7505. (a) A license to raise and release, or release, domesticated migratory game birds for shooting by persons who pay for that privilege may be issued annually by the department, and shall be valid from July 1 through the following June 30, upon payment of a base fee of eighty dollars (\$80), as adjusted under Section 2780.

(b) The application for the license shall show the size and location of the area to be licensed.

Comment. Subdivision (a) of Section 7505 continues the second sentence of the first paragraph of former Fish and Game Code Section 3300 without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “The licenses” are replaced with “A license to raise and release, or release, domesticated migratory game birds for shooting by persons who pay for that privilege.”
- A cross-reference to former Fish and Game Code Section 713 is updated.

Subdivision (b) continues the first sentence of former Fish and Game Code Section 3301 without change, except as indicated below:

The following nonsubstantive change is made:

- The words “a license” are replaced with “the license.”

§ 7510. Posting of area

7510. A person licensed pursuant to Section 7505 shall post the boundaries of the licensed area with signs, at intervals of not more than 500 feet, which shall indicate that the area is licensed for the shooting of domesticated migratory game birds. The dimensions of each sign shall be at least 12 by 18 inches.

Comment. Section 7510 continues the second and third sentences of former Fish and Game Code Section 3301 without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “If an application for a license is approved and a license is issued” is deleted as superfluous.
- The words “the licensee” are replaced with “A person licensed pursuant to Section 7505.”
- The words “Such signs shall be of a size not less than” are replaced with “The dimensions of each sign shall be at least.”

§ 7515. Additional regulatory requirements

7515. The commission may adopt additional regulations deemed necessary for the releasing and shooting of domesticated migratory game birds and shall set the season and areas where domesticated migratory game birds may be taken. If a person licensed pursuant to Section 7505 violates any provision of this article or any regulation adopted pursuant to this article, the commission may cancel or

1 revoke that license after providing the licensee notice and an opportunity to be
2 heard by the commission.

3 **Comment.** Section 7515 continues former Fish and Game Code Section 3302 without change,
4 except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • The word “prescribe” is replaced with “adopt.”
- 7 • The word “such” is replaced with “domesticated migratory game.”
- 8 • The words “the licensee” are replaced with “a person licensed pursuant to Section
9 7505.”
- 10 • The words “any of the provisions” are replaced with “any provision.”
- 11 • The word “the” is replaced with “that.”
- 12 • The words “regulations made” are replaced with “regulation adopted.”
- 13 • The word “thereto” is replaced with “to this article.”
- 14 • The words “provided notice has been given to the licensee and he has been given an
15 opportunity to be heard” are replaced with “, after providing the licensee notice and an
16 opportunity to be heard.”

17 **§ 7520. Care of birds**

18 7520. When domesticated migratory game birds are reared or held for release by
19 a person licensed pursuant to Section 7505, the licensee shall provide proper and
20 adequate care for the birds and shall raise and hold them only under sanitary
21 conditions. Conditions for proper care and raising shall be prescribed by the
22 commission.

23 **Comment.** Section 7520 continues the first and second sentences of former Fish and Game
24 Code Section 3303 without change, except as indicated below:

25 The following nonsubstantive changes are made:

- 26 • The word “Where” is replaced with “When.”
- 27 • The words “the licensee” are replaced with “a person licensed pursuant to Section
28 7505.”

29 **§ 7525. Inspection of birds and facilities**

30 7525. A person licensed pursuant to Section 7505 shall provide for the
31 inspection of birds and facilities upon the request of the department.

32 **Comment.** Section 7525 continues the third sentence of former Fish and Game Code Section
33 3303 without change, except as indicated below:

34 The following nonsubstantive change is made:

- 35 • The words “The licensee” are replaced with “A person licensed pursuant to Section
36 7505.”

37 **§ 7530. Condition of birds**

38 7530. A person licensed pursuant to Section 7505 may only release for shooting,
39 domesticated migratory game birds that are at least 14 weeks of age, capable of
40 strong and sustained flight, fully feathered, and otherwise in condition to survive
41 in the wild. A licensee shall not release a domesticated migratory game bird that is
42 in any of the following conditions:

43 (a) Altered in any manner that would, in the opinion of the department, render
44 the bird incapable of normal sustained flight.

1 (b) Diseased.

2 (c) Shows evidence of malnutrition or injury.

3 **Comment.** Section 7530 restates former Fish and Game Code Section 3305 without
4 substantive change.

5 **Staff Note.** Proposed Section 7530 is intended to restate existing Section 3305 to improve its
6 clarity, without changing its substantive effect. The existing provision reads as follows:

7 “All domesticated migratory game birds at time of release for shooting shall be at least 14
8 weeks of age, capable of strong and sustained flight, fully feathered, and otherwise in condition to
9 survive in the wild. Birds that are altered in any manner which would, in the opinion of the
10 department, render them incapable of normal sustained flight, or which are diseased, or show
11 evidence of malnutrition or injury, shall not be released.”

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

14 **§ 7535. Blinds**

15 7535. (a) Shooting in an area licensed pursuant to Section 7505 shall be
16 confined to blinds, except for shooting necessary to recover a downed and injured
17 bird.

18 (b) No more than three shooters shall occupy or use each blind.

19 (c) Blinds shall be constructed to prevent the shooting of domestic migratory
20 game birds over water, and to insure maximum safety to occupants of adjoining
21 blinds.

22 (d) Blinds shall be situated so that the occupants of the blinds cannot see the
23 release site.

24 **Comment.** Section 7535 continues the first and second paragraphs of former Fish and Game
25 Code Section 3306 without change, except as indicated below:

26 The following nonsubstantive changes are made:

- 27 • Subdivision designations are added.
- 28 • The first paragraph of the section is divided into two subdivisions.
- 29 • The word “Shooting” is replaced with “Shooting in an area licensed pursuant to Section
30 7505.”
- 31 • The words “and not” are replaced with “No.”
- 32 • The word “such” is deleted as superfluous.
- 33 • The words “The blinds shall be so situated” are replaced with “Blinds shall be situated
34 so.”

35 **§ 7540. Shooting or taking near release point**

36 7540. (a) A person licensed pursuant to Section 7505 shall not permit any
37 shooting within 500 feet of a point where a domesticated migratory bird is
38 released.

39 (b) A domesticated migratory game bird shall not be taken within 500 feet of its
40 point of release.

41 **Comment.** Section 7540 continues the third paragraph of former Fish and Game Code Section
42 3306 without change, except as indicated below:

43 The following nonsubstantive changes are made:

- 44 • Subdivision designations are added.

- 1 • The words “The licensee” are replaced with “A person licensed pursuant to Section
- 2 7505.”
- 3 • The word “the birds are” are replaced with “a domesticated migratory bird is.”
- 4 • The words “, nor shall any birds be taken within such distance from” are replaced with
- 5 “A domesticated migratory game bird may not be taken within 500 feet of its point of
- 6 release.”

7 **§ 7545. Birds injured or killed**

8 7545. (a) A person licensed pursuant to Section 7505 shall not permit an injured
9 bird to remain on a pond or feeding area, or knowingly permit an injured bird to be
10 used in any subsequent release.

11 (b) Any bird killed or injured by a shooter shall be retrieved without delay, and
12 any injured bird shall be humanely dispatched.

13 **Comment.** Subdivision (a) of Section 7545 continues the second sentence of the first
14 paragraph of former Fish and Game Code Section 3307 without change, except as indicated
15 below:

16 The following nonsubstantive changes are made:

- 17 • The words “The licensee” are replaced with “A person licensed pursuant to Section
- 18 7505.”
- 19 • The word “birds” is singularized.
- 20 • The words “nor shall he” are replaced with “or.”
- 21 • The words “such birds” are replaced with “an injured bird.”

22 Subdivision (b) continues the first sentence of the first paragraph of former Fish and Game
23 Code Section 3307 without change, except as indicated below:

24 The following nonsubstantive change is made:

- 25 • The words “birds” and “shooters” are singularized.

26 **§ 7550. Retrieving dog**

27 7550. In order to prevent the loss of any dead or injured bird, a person licensed
28 pursuant to Section 7505 shall provide the use of a retrieving dog, without cost, to
29 all shooters, except that shooters may provide their own retrieving dogs. A
30 licensee shall not permit the shooting of any bird unless a retrieving dog is
31 immediately available for use by all shooters.

32 **Comment.** Section 7550 continues the second paragraph of former Fish and Game Code
33 Section 3307 without change, except as indicated below:

34 The following nonsubstantive changes are made:

- 35 • The word “birds” is singularized.
- 36 • The words “the licensee” are replaced with “a person licensed pursuant to Section
- 37 7505.”
- 38 • The words “The licensee” are replaced with “A licensee.”

39 **§ 7555. Seal**

40 7555. (a) No dead, domesticated migratory game bird shall be removed from an
41 area licensed pursuant to Section 7505 until there is securely attached to the
42 carcass a seal.

43 (b). The seal shall remain attached to the carcass until the carcass is finally
44 prepared for consumption.

1 (c) Each seal shall be supplied by the department at a fee set by the commission
2 that may not exceed five cents (\$0.05).

3 **Comment.** Section 7555 continues former Fish and Game Code Section 3309 without change,
4 except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • Subdivision designations are added.
- 7 • A comma is deleted for clarity.
- 8 • The phrase “the premises of a licensed area” is replaced with “an area licensed
9 pursuant to Section 7505.”
- 10 • The words “, and such seal” are replaced with “that.”
- 11 • The word “it” is replaced with “the carcass.”
- 12 • The word “such” is deleted as superfluous.
- 13 • The words “not to” are replaced with “that may not.”

14 **§ 7560. Inspection fee**

15 7560. A person licensed pursuant to Section 7505 shall pay the department an
16 inspection fee not to exceed five cents (\$0.05) for each domesticated migratory
17 game bird raised or used on the area licensed to insure adherence to these
18 regulations.

19 **Comment.** Section 7560 continues former Fish and Game Code Section 3308 without change,
20 except as indicated below:

21 The following nonsubstantive change is made:

- 22 • The word “Licensees” is replaced with “A person licensed pursuant to Section 7505.”
- 23 • The words “a licensed area” are replaced with “the area licensed.”
- 24 • The word “proper” is deleted as superfluous.

25 **§ 7565. Shooter required to have hunting license**

26 7565. It is unlawful to shoot a domesticated game bird in an area licensed
27 pursuant to Section 7505 without a valid hunting license as provided by Section
28 6255.

29 **Comment.** Section 7565 continues former Fish and Game Code Section 3310 without change,
30 except as indicated below:

31 The following nonsubstantive changes are made:

- 32 • The words “shall be unlawful for any person” are replaced with “is unlawful.”
- 33 • The word “birds” is singularized.
- 34 • The words “on a licensed area” are replaced with “in an area licensed pursuant to
35 Section 7505.”
- 36 • A cross-reference to Section 3031 is updated.

37 **§ 7570. Federal requirements**

38 7570. A person releasing or shooting a domesticated migratory game bird shall
39 comply with all applicable federal laws and regulations relating to the releasing or
40 shooting of domesticated migratory game birds.

41 **Comment.** Section 7570 continues former Fish and Game Code Section 3311 without change,
42 except as indicated below:

43 The following nonsubstantive changes are made:

- 44 • The words “The licensee” are replaced with “A person releasing or shooting a
45 domesticated migratory game bird.”

- The word “or” is replaced with “and.”
- The word “and” is replaced with “or.”

Staff Note. Existing Section 3311 appears designed as a reminder that federal laws and regulations may also govern the releasing and shooting of domesticated migratory game birds. However, the use of the word “licensee” in the provision is problematic, for two reasons.

First, it is not clear whether the “licensee” referred to is (1) a person issued a license to *raise and release*, or *release* domesticated migratory game birds for shooting by others pursuant to existing Section 3300, (2) a person issued the hunting license referred to in existing Section 3310 to *shoot* domesticated migratory game birds, or (3) both of the above. The ambiguity is enhanced by a reference in Section 3311 to federal laws and regulations relating to the “releasing *and* shooting” of domesticated migratory game birds.

Second, regardless of which “licensee” is contemplated, the implication that this provision is applicable only to those licensees is confusing. Absent an exemption in federal law, all persons releasing or shooting a domesticated migratory game bird, whether licensed or not, would be required to comply with whatever federal laws or regulations were “applicable” to that conduct.

To address both of these issues, the staff has revised the provision so it applies to *any* person who either releases or shoots a domesticated migratory game bird.

The staff invites comment on whether that revision is appropriate.

Article 5. Exotic Nonresident Game Birds

§ 7600. Exotic nonresident game birds

7600. The commission may adopt regulations it deems necessary to govern the release, taking, and possession of exotic nonresident game birds.

Comment. Section 7600 continues the first paragraph of former Fish and Game Code Section 3516 without change, except as indicated below:

The following nonsubstantive change is made:

- The words “such” and “as” are deleted as superfluous.

§ 7605. Release

7605. An exotic nonresident game bird may be released in this state only on prior approval of the commission.

Comment. Section 7605 continues former Fish and Game Code Section 3515 without change, except as indicated below:

The following nonsubstantive changes are made:

- The word “birds” is singularized.
- The word “State” is replaced with “state.”

CHAPTER 4. NONGAME BIRDS

Article 1. Taking and Possession

§ 7700. Taking generally

7700. (a) It is unlawful to take any nongame bird except as provided in this code or in regulations of the commission.

(b) Except as provided in **Section 12001**, the punishment for a violation of this section is a fine of not more than five thousand dollars (\$5,000), imprisonment in

1 the county jail for not more than six months, or by both that fine and
2 imprisonment.

3 **Comment.** Subdivision (a) of Section 7700 continues the second sentence of former Fish and
4 Game Code Section 3800(a) without change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • The words “accordance with” are deleted as superfluous.
- 7 • The words “or, when relating to mining operations, a mitigation plan approved by the
8 department” are deleted as superfluous. See Section [existing Fish and Game Code
9 **Section 3800(b)-(c)**] (exception for incidental take of nongame bird pursuant to mining
10 mitigation plan).

11 Subdivision (b) continues the part of former Fish and Game Code Section 12002(c) applicable
12 to former Fish and Game Code Section 3800 without change, except as indicated below:

13 The following nonsubstantive changes are made:

- 14 • The word “specified” is replaced with “provided.”
- 15 • Cross-references to former Fish and Game Code Sections 3800 and 12001 are updated.
- 16 • A cross-reference to former Fish and Game Code Section 12010 is deleted.

17  **Staff Notes.** (1) Existing Section 3800 contains an exception to the general prohibition on
18 taking nongame birds, for birds taken pursuant to a mining mitigation plan approved by the
19 Department. The section sets forth extensive rules relating to that exception that are quite similar
20 to rules for a similar exception to another prohibition. See existing Section 3005.

21 The staff hopes to combine all of the mining mitigation plan provisions and locate them
22 elsewhere in the code. The combined provisions will continue the existing exception to the
23 prohibition on taking nongame birds.

24 (2) Existing Section 12002(c), which in part would be continued by proposed Section 7700(b),
25 provides as follows:

26 “Except as specified in Sections 12001 and 12010, the punishment for violation of Section
27 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000),
28 imprisonment in the county jail for not more than six months, or by both that fine and
29 imprisonment.”

30 However, Section 12010 addresses only the maximum punishment for a violation of existing
31 Section 3503.5 (governing the taking or possession of birds of prey). **The reference to Section**
32 **12010 has therefore been deleted from proposed Section 7700(b).**

33 **§ 7705. Taking or possession of migratory nongame bird**

34 7705. (a) It is unlawful to take or possess any migratory nongame bird as
35 designated in the Migratory Bird Treaty Act, except as provided by rules and
36 regulations adopted by the Secretary of the Interior under provisions of that act.

37 (b) Except as provided in **Section 12001**, the punishment for a violation of this
38 section is a fine of not more than five thousand dollars (\$5,000), imprisonment in
39 the county jail for not more than six months, or by both that fine and
40 imprisonment.

41 **Comment.** Subdivision (a) of Section 7705 continues former Fish and Game Code Section
42 3513 without change, except as indicated below:

43 The following nonsubstantive changes are made:

- 44 • A reference to any part of a migratory nongame bird is deleted as superfluous. See
45 Section 95 (reference to animal generally includes part of animal).
- 46 • A comma is added for clarity.
- 47 • The words “the Migratory Treaty Act” are replaced with “that act.”

1 Subdivision (b) continues the part of former Fish and Game Code Section 12002(c) applicable
2 to former Fish and Game Code Section 3513 without change, except as indicated below:

3 The following nonsubstantive change is made:

- 4 • The word “specified” is replaced with “provided.”
- 5 • The word “violation” is replaced with “a violation.”
- 6 • Cross-references to former Fish and Game Code Sections 3513 and 12001 are updated.
- 7 • A cross-reference to former Fish and Game Code Section 12010 is deleted.

8 **☞ Staff Note.** Existing Section 12002(c), which in part would be continued by proposed Section
9 7705(b), provides as follows:

10 “Except as specified in Sections 12001 and 12010, the punishment for violation of Section
11 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000),
12 imprisonment in the county jail for not more than six months, or by both that fine and
13 imprisonment.”

14 However, Section 12010 addresses only the maximum punishment for a violation of existing
15 Section 3503.5 (governing the taking or possession of birds of prey). **The reference to Section**
16 **12010 has therefore been deleted from proposed Section 7605(b).**

17 **§ 7710. Taking of nongame birds injuring crops or property**

18 7710. (a) Nongame birds not covered by the Migratory Bird Treaty Act that are
19 found to be injuring growing crops or property may be taken by any of the
20 following:

21 (1) The owner or tenant of the premises where the crops or property are located.

22 (2) Officers or employees of the Department of Food and Agriculture, or federal
23 or county officers or employees, when acting in their official capacities pursuant
24 to the provisions of the Food and Agricultural Code pertaining to pests, or
25 pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of
26 Division 4 of the Food and Agricultural Code.

27 (b) Landowners and tenants taking birds in accordance with this section are
28 exempt from Section 6105.

29 **Comment.** Section 7710 continues former Fish and Game Code Section 3801.5 without
30 change, except as indicated below:

31 The following nonsubstantive changes are made:

- 32 • Subdivision and paragraph designations are added.
- 33 • In subdivision (a), the word “which” is replaced with “that.”
- 34 • In subdivision (a), the word “premises” is replaced with “premises where the crops or
35 property are located.”
- 36 • In subdivision (a), the words “may be taken by the owner or tenant of the premises.
37 They may also be so taken by officers or employees...” are replaced with “may be
38 taken by any of the following: (1) The owner or tenant of the premises. (2) Officers or
39 employees.”
- 40 • In subdivision (b), a cross-reference to former Fish and Game Code Section 3007 is
41 updated.

1 Article 2. Nongame Bird Parts

2 **§ 7715. Possession of parts of nongame bird**

3 7715. (a) Except as otherwise provided in this code or regulations adopted
4 pursuant to this code, it is unlawful to possess the carcass, skin, or other part of
5 any nongame bird.

6 (b) The feathers, carcass, skin, or part of any nongame bird possessed in
7 violation of any provision of this code shall be seized by the department and
8 delivered to a California Native American tribal government or a scientific or
9 educational institution, used by the department, or destroyed.

10 **Comment.** Section 7715 continues former Fish and Game Code Section 3801.6(a) without
11 change, except as indicated below:

12 The following nonsubstantive changes are made:

- 13 • The provision is divided into two subdivisions.
- 14 • The words “regulations made pursuant thereto” are replaced with “regulations adopted
15 pursuant to this code.”
- 16 • The word “part” is singularized.
- 17 • The words “by any person” are deleted as superfluous.
- 18 • The words “of the provisions” are replaced with “provision.”

19 **§ 7720. Exception for possession of parts of nongame bird by Native American**

20 7720. It shall be an affirmative defense to a violation of Section 7715 if the
21 possessor of feathers, carcass, skin, or part of a nongame bird legally acquired the
22 feathers, carcass, skin, or part, possesses them for a tribal, cultural, or spiritual
23 purpose, and satisfies either of the following criteria:

24 (a) The possessor is an enrolled member of a federally recognized Native
25 American tribe or nonfederally recognized California Native American tribe listed
26 on the California Tribal Consultation List maintained by the Native American
27 Heritage Commission and has, in that person’s immediate possession, valid tribal
28 identification or other irrefutable proof of current enrollment.

29 (b) The possessor has a certificate of degree of Indian blood issued by the
30 United States Bureau of Indian Affairs in that person’s immediate possession.

31 **Comment.** Section 7720 continues former Fish and Game Code Section 3801.6(b)(1) without
32 change, except as indicated below:

33 The following nonsubstantive changes are made:

- 34 • A cross-reference to former Fish and Game Code Section 3801.6 is updated.
- 35 • The words “part” and “purpose” are singularized.
- 36 • The words “who has, in his or her” are replaced with “and has, in that person’s.”
- 37 • The words “his or her” are replaced with “that person’s.”

38 **§ 7725. Salvaging of nongame birds**

39 7725. (a) A Native American satisfying the criteria that would constitute an
40 affirmative defense under Section 7720 may salvage a dead nongame bird, if all of
41 the following conditions are satisfied:

42 (1) The person does not possess, nor is in the company of any person who
43 possesses, a firearm, BB device as defined in Section 16250 of the Penal Code,

1 trap, snare, net archery equipment, device capable of discharging a projectile, or
2 any apparatus designed to take a bird.

3 (2) The person was not involved in nor present at the take of the nongame bird
4 to be salvaged, and had not received related information originating from any
5 person present at the time of the take of the nongame bird.

6 (3) The nongame bird salvaged had not been struck with any thrown or
7 discharged projectile, or trapped, netted, caught, or snared.

8 (b) Notwithstanding subdivision (a), an officer deputized pursuant to this code
9 may interrupt an ongoing salvaging of a dead nongame bird carcass, feathers, skin,
10 or part if, in the officer's judgment, the activity causes a public disruption, or
11 safety hazard, or is detrimental to the ability of the department to prevent a
12 possible violation of this section. In that event, the officer may seize the carcass,
13 feathers, skin, or part being salvaged, or may return the carcass, feathers, skin, or
14 part to the general location from where it had been salvaged.

15 **Comment.** Subdivision (a) of Section 7725 restates the second, third, and fourth sentences of
16 former Fish and Game Code Section 3801.6(b)(2) without substantive change.

17 Subdivision (b) restates former Fish and Game Code Section 3801.6(c) without substantive
18 change.

19 **Staff Notes.** (1) Proposed Section 7725(a) is intended to restate the second, third, and fourth
20 sentences of existing Section 3801.6(b)(2) to improve their clarity, without changing their
21 substantive effect. The existing sentences read as follows:

22 "Native Americans meeting the affirmative defense requirements may salvage dead nongame
23 birds so long as the person salvaging these birds does not possess, nor is in the company of any
24 person who possesses, a firearm, BB device as defined in Section 16250 of the Penal Code, trap,
25 snare, net archery equipment, device capable of discharging a projectile, or any apparatus
26 designed to take birds. Salvaging shall not take place by any person involved in the take of the
27 nongame bird to be salvaged, any person present at the time of the take, or by any person who
28 received related information originating from any person present at the time of the take of the
29 nongame bird. Salvaging pursuant to this subdivision shall not take place if a bird has been struck
30 with any thrown or discharged projectile, trapped, netted, caught, or snared."

31 **The staff invites comment on whether the proposed restatement would cause any**
32 **substantive change in the meaning of these sentences.**

33 (2) Proposed Section 7725(b) is intended to restate existing Section 3801.6(c) to improve its
34 clarity, without changing its substantive effect. The existing provision reads as follows:

35 "Notwithstanding subdivisions (a) and (b), any officer deputized pursuant to this code may
36 interrupt any ongoing salvaging of dead nongame carcasses, feathers, skins, or parts if, in the
37 officer's judgment, the activity causes a public disruption, safety hazard, or is detrimental to the
38 ability of the department to prevent a possible violation of this section. The officer may seize any
39 of the salvaged feathers, carcasses, skins, or parts and has the option of returning them to the
40 general location from where they were salvaged."

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

43 (3) Existing Section 3801.6(c) authorizes a deputized officer to interrupt specified salvaging
44 activity "[n]otwithstanding subdivisions (a) and (b) [of Section 3801.6]." However, the only
45 aspect of either of those subdivisions that appears to relate to salvaging activity is the portion of
46 existing Section 3801.6(b) that would be continued by proposed Section 7625(a). Proposed
47 Section 7625(b) would revise existing Section 3801.6(c) accordingly.

1 **The staff invites comment on whether that revision would cause any substantive change**
2 **in the meaning of any provision.**

3 **§ 7730. Sale of parts of nongame bird**

4 7730. Nothing in this article allows any person to sell the feathers, carcass, skin,
5 or other part of a nongame bird.

6 **Comment.** Section 7730 continues the first sentence of former Fish and Game Code Section
7 3801.6(b)(2) without change, except as indicated below:

8 The following nonsubstantive changes are made:

- 9 • A cross-reference to former Fish and Game Code Section 3801.6 is updated.
- 10 • The words “nongame bird feathers, carcasses, skins, or parts” are replaced with “the
11 feathers, carcass, skin, or other part of a nongame bird.”

12 **Article 3. Specific Nongame Birds**

13 **§ 7735. Racing pigeons**

14 7735. (a) Except as provided in subdivision (b), any person who purposely takes
15 any racing pigeon that at the time of taking is registered with a recognized
16 organization is guilty of a misdemeanor.

17 (b) This section does not apply to either of the following:

18 (1) The taking of a registered racing pigeon by its owner.

19 (2) The incidental take of a registered racing pigeon while shooting or taking a
20 wild band-tailed or domestic pigeon (*Columba livia*).

21 **Comment.** Section 7735 restates former Fish and Game Code Section 3680 without
22 substantive change.

23  **Staff Note.** Section 7735 is intended to restate existing Section 3680 to improve its clarity,
24 without changing its substantive effect. The existing section reads as follows:

25 “3680. Any person, other than the owner thereof, who at any time, by any means or in any
26 manner, purposely takes any racing pigeon currently registered with a recognized organization, is
27 guilty of a misdemeanor. However, the incidental take of registered racing pigeons with the
28 shooting or taking of wild band-tailed pigeons or domestic pigeons (*Columba livia*), is not a
29 violation of this section.”

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

32 **§ 7740. Sparrows and starlings**

33 7740. (a) Except as provided in Section 6110 and this section, the following
34 nongame birds may be taken or possessed at any time:

35 (1) English sparrow (*Passer domesticus*).

36 (2) Starling (*Sturnus vulgaris*).

37 (b) Notwithstanding Section 6105 or any other provision of this code or
38 regulation adopted pursuant to this code requiring the possession of a hunting
39 license, a landowner or lessee, or an agent of either in immediate possession of
40 written authority from the landowner or lessee, shall not be required to obtain a
41 hunting license or a depredation permit to take a nongame bird listed in
42 subdivision (a) on land owned or leased by the landowner or lessee.

1 (c) All other persons taking a nongame bird listed in subdivision (a) shall be
2 licensed pursuant to Section 6105.

3 **Comment.** Section 7740 restates former Fish and Game Code Section 3801 without
4 substantive change.

5 **Staff Notes:** (1) Proposed Section 7740 is intended to restate existing Section 3801 to
6 improve its clarity, without changing its substantive effect. The existing section reads as follows:

7 “3801. Notwithstanding Section 3007 or any other provision of this code or regulations made
8 pursuant thereto requiring the possession of a hunting license, a landowner or lessee or agent of
9 either in immediate possession of written authority from the landowner or lessee, shall not be
10 required to obtain a hunting license or a depredation permit to take the following nongame birds
11 on land owned or leased by the landowner or lessee. Hunters otherwise taking the following
12 nongame birds shall be licensed pursuant to Section 3007. The following nongame birds taken in
13 compliance with this section may be taken and possessed by any person at any time, except as
14 provided in Section 3000:

- 15 (a) English sparrows (*Passer domesticus*).
16 (b) Starlings (*Sturnus vulgaris*).”

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

19 (2) Existing Section 3801 was amended in 2007 to add most of the above language relating to
20 licensure. 2007 Cal. Stat. ch. 285. Previously, the section had read:

21 “3801. Unless otherwise provided by the regulations of the commission the following nongame
22 birds may be taken and possessed by any person at any time, except as provided in Section 3000:

- 23 (a) English sparrows (*Passer domesticus*).
24 (b) Starlings (*Sturnus vulgaris*).”

25 The 2007 amendment to the section deleted the language authorizing the Commission to
26 regulate the taking of sparrows and starlings. That deletion may have had an inadvertent effect,
27 by removing statutory authority for existing Commission regulations that govern the *manner* in
28 which sparrows and starlings may be taken. See 14 CFR 472(a); 14 CFR 475.

29 **The staff invites comment on whether the introductory clause of proposed Section 7740(a)**
30 **should be revised to read: “Except as provided in Section 6110 and this section, the**
31 **following nongame birds may be taken or possessed at any time, subject to any regulation**
32 **adopted by the Commission that governs the manner of that taking: “**
33

34
35 **§ 7745. Egret, osprey, bird of paradise, goura, or numidi**

36 7745. It is unlawful to take, sell, or purchase any egret, osprey, bird
37 of paradise, goura, or numidi.

38 **Comment.** Section 7745 continues former Fish and Game Code Section 3505 without change,
39 except as indicated below:

40 The following nonsubstantive change is made:

- 41 • A reference to a “part” of a bird is deleted as superfluous. See Section 95 (reference to
42 animal generally includes part of animal).

CHAPTER 5. BIRDS OF PREY

§ 7800. Taking or possession

7800. (a) It is unlawful to take, possess, or destroy a bird in the order Falconiformes or Strigiformes (birds-of-prey), or to take, possess, or destroy a nest or egg of a bird in either of those orders, except as provided by this code or any regulation adopted pursuant to this code.

(b) Except as provided in **Section 12001**, the maximum punishment for each violation of this section is as follows:

(1) If the violation relates to a bird-of-prey designated as endangered, threatened, or fully protected, a fine of five thousand dollars (\$5,000), imprisonment in the county jail for a period of not to exceed one year, or both that fine and imprisonment.

(2) If the violation relates to a bird-of-prey that was taken from the wild and is subsequently reported to the department as having been bred in captivity, a fine of five thousand dollars (\$5,000), imprisonment in the county jail for a period of not to exceed one year, or both that fine and imprisonment.

(3) For all other violations of this section, a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for a period not to exceed six months, or both that fine and imprisonment.

Comment. Subdivision (a) of Section 7800 continues former Fish and Game Code Section 3503.5 without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “any birds” is replaced with “a bird.”
- The word “order” is singularized.
- The words “the nest or eggs of any such bird” are replaced with “a nest or egg of a bird in either of those orders.”
- The words “otherwise provided by this code or any regulation adopted pursuant thereto” are replaced with “provided by this code or any regulation adopted pursuant to this code.”

Subdivision (b) merges and restates former Fish and Game Code Section 12010, and the part of former Fish and Game Code Section 12002(c) applicable to former Fish and Game Code Section 3503.5, without substantive change.

Staff Notes. (1) Staff research indicates that the two orders identified in existing Section 3503.5 together constitute the entire universe of birds more commonly known as birds of prey. **The staff invites comment on whether the removal of references to “bird of prey” in proposed Section 7800 substantively changes the meaning of any provision in the section.**

(2) Proposed Section 7800(b) is intended to merge and restate the part of existing Section 12002(c) applicable to existing Section 3503.5, and existing Section 12010, to improve the clarity of those provisions without changing their substantive effect. The existing provisions read as follows:

“12002. (c) Except as specified in Sections 12001 and 12010, the punishment for violation of Section 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.”

1 “12010. (a) Notwithstanding Section 12002, the maximum punishment for each violation of
2 Section 3503.5 relating to a bird-of-prey designated as endangered, threatened, or fully protected
3 is a fine of five thousand dollars (\$5,000) or imprisonment in the county jail for a period of not to
4 exceed one year, or both the fine and imprisonment.

5 (b) Notwithstanding Section 12002, the maximum punishment for a violation of Section 3503.5
6 relating to any bird-of-prey that was taken from the wild and that is subsequently reported to the
7 department as having been bred in captivity is a fine of five thousand dollars (\$5,000) or
8 imprisonment in the county jail for a period of not to exceed one year, or both the fine and
9 imprisonment.”

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

12 CHAPTER 6. FULLY PROTECTED BIRDS

13 § 7900. Prohibited taking or possession

14 7900. Except as provided in Section **2081.7**, **2835**, or this chapter:

15 (a) A fully protected bird may not be taken or possessed at any time.

16 (b) No provision of this code or any other law shall be construed to authorize the
17 issuance of a permit or license to take any fully protected bird, and no issued
18 permit or license shall be construed to authorize the taking of a fully protected
19 bird.

20 **Comment.** Section 7900 continues the first two sentences of former Fish and Game Code
21 Section 3511(a)(1) without change, except as indicated below:

22 The following nonsubstantive changes are made:

- 23 • Subdivision designations are added.
- 24 • A cross-reference to the chapter continuing the other provisions of former Fish and
25 Game Code Section 3511(a) is added.
- 26 • The words “birds,” “permits,” and “licenses” are singularized.
- 27 • The phrase “or parts thereof” is deleted as superfluous. See Section 95 (reference to
28 animal generally includes part of animal).
- 29 • The phrase “no permits or licenses heretofore issued shall have any force or effect for
30 that purpose” is replaced with “no issued permit or license shall be construed to
31 authorize the taking of a fully protected bird.”

32 § 7905. Department research

33 7905. (a) The department may authorize the taking of fully protected birds for
34 necessary scientific research, including efforts to recover fully protected,
35 threatened, or endangered species, and may authorize the live capture and
36 relocation of those species pursuant to a permit for the protection of livestock.

37 (b) Prior to authorizing the take of any fully protected bird, the department shall
38 make an effort to notify all affected and interested parties to solicit information
39 and comments on the proposed authorization.

40 (c) The notice shall be published in the California Regulatory Notice Register,
41 and shall be delivered to each person who has given the department written notice
42 of that person’s interest in fully protected species and provided the department
43 either an e-mail or postal address.

1 (d) Affected and interested parties shall have 30 days after the notice is
2 published in the California Regulatory Notice Register to provide any relevant
3 information and comments on the proposed authorization.

4 (e) As used in this subdivision, “scientific research” does not include any actions
5 taken as part of specified mitigation for a project, as defined in **Section 21065 of**
6 **the Public Resources Code.**

7 **Comment.** Section 7905 continues the third through the seventh sentences of former Fish and
8 Game Code Section 3511(a)(1), and paragraph (2) of that subdivision, without change, except as
9 indicated below:

10 The following nonsubstantive changes are made:

- 11 • Subdivision designations are added.
- 12 • The word “However” is deleted.
- 13 • The words “those species” are replaced with “fully protected birds.”
- 14 • The words “any of those species” are replaced with “any fully protected bird.”
- 15 • The word “notification” is replaced with “notice.”
- 16 • The words “and be made available” are replaced with “and shall be delivered.”
- 17 • The words “who has notified the department, in writing, of his or her interest” are
18 replaced with “who has given the department written notice of that person’s interest.”
- 19 • The words “and who has provided an e-mail address, if available, or postal address to
20 the department” are replaced with “and provided the department either an e-mail or
21 postal address.”

22 **Staff Note.** The term “project” is defined, for purposes of the entire Fish and Game Code, by
23 existing Section 711.2(a), as having “the same meaning as defined in Section 21065 of the Public
24 Resources Code.” In the proposed law, that definitional provision will be added to the list of
25 generally applicable definitional provisions in Division 1 (but has not as yet been assigned a
26 section number).

27 **The staff invites comment on whether or not that generally applicable definitional**
28 **provision should be cross-referenced in proposed Section 7905.**

29 **§ 7910. Possession of legally imported fully protected birds**

30 7910. A legally imported fully protected bird may be possessed under a permit
31 issued by the department.

32 **Comment.** Section 7910 continues paragraph (3) of subdivision (a) of former Fish and Game
33 Code Section 3511 without change, except as indicated below:

34 The following nonsubstantive changes are made:

- 35 • The word “birds” is singularized.
- 36 • The phrase “or parts thereof” is deleted as superfluous. See Section 95 (reference to
37 animal generally includes part of animal).

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).

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
355 (1st, 2nd para)	7105	3684(a)	7420(a)
355 (3rd para)	7115	3684(b)	7420(b)
356 (1st para)	7100	3684(c) (1st sent)	7420(d)
356 (2nd para)	7110	3684(c) (2nd sent)	7425(a)
357	7120	3684(c) (3rd sent)	7430
3010	7455(a)	3684(c) (4th, 5th sent)	7425(b)
3270	7215	3684(d)	7435(a)
3300 (1st para, 1st sent)	7500(a)	3684(e) (1st sent)	7445
3300 (1st para, 2nd sent)	7505(a)	3684(e) (2nd sent)	7420(c)
3300 (2nd para)	7500(b)	3684(f)	7450
3301 (1st sent)	7505(b)	3684(g)	7420(c)
3301 (2nd, 3rd sent)	7510	3686 (1st sent)	7425(c)
3302	7515	3686 (2nd sent, 1st part)	7435(b)
3303 (1st, 2nd sent)	7520	3686 (2nd sent, 2nd part)	7440
3303 (3rd sent)	7525	3700(a)	7300(a)
3305	7530	3700(b)-(d), (f)	7310
3306 (1st, 2nd para)	7535	3700(e)	7325(a)
3306 (3rd para)	7540	3700.1(a)	7300(a)
3307 (1st para, 1st sent)	7545(b)	3700.1(b), (c)	7315
3307 (1st para, 2nd sent)	7545(a)	3700.2(a)-(f)	7320
3308	7560	3700.2(g)	7325(a)
3309	7555	3701 (1st sent)	7330
3310	7565	3701 (2nd sent)	7335(a)
3311	7570	3702 (1st sent)	7340
3501	7205	3702 (2nd sent)	7355
3502	7200	3702 (3rd sent)	7350
3503	7000(a)	3702.5	7325(b)
3503.5	7800(a)	3703	7360(a)
3504	7005	3704 (1st para, 1st, 2nd sent)	7335(b)
3505	7745	3704 (1st para, 3rd sent)	7335(c)
3508	7210	3704 (1st para, 4th sent)	7345
3511(a)(1) (1st, 2nd sent)	7900	3704.5 (1st sent)	7365
3511(a)(1) (3rd-7th sent)	7905(a)-(d)	3704.5 (2nd sent, 1st part)	7350
3511(a)(2)	7905(e)	3704.5 (2nd sent, 2nd part)	7355
3511(a)(3)	7910	3705	7360(b)
3513	7705(a)	3800(a) (2nd sent)	7700(a)
3515	7605	3801	7740
3516 (1st para)	7600	3801.5	7710
3660	7455(b)	3801.6(a)	7715
3680	7735	3801.6(b)(1)	7720
3681	7305	3801.6(b)(2) (1st sent)	7730
3682(a)	7400	3801.6(b)(2) (2nd sent)	7725(a)
3682(b), (c)	7405	3801.6(c)	7725(b)
3682.1(a)	7400	12001.5	7300(b)
3682.1(b), (c)	7410	12002(c)	7000(b), 7700(b), 7705(b), 7800(b)
3682.2	7415	12010	7800(b)