

Memorandum 2014-48

**Fish and Game Law:
Proposed Division 5, Part 2, Title 3 (Mammals)**

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 2 of Part 2 of Division 5 (“Birds”) was presented at the Commission’s September 2014 meeting.⁴ This memorandum presents a staff draft of provisions relating to mammals, 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 a provision have been proposed (typically to conform to standard legislative drafting practices, update cross-references, or correct clear defects), the revisions

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 2014-38.

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 3 (commencing with Section 3950) of Division 4 of the Fish and Game Code.

The beginning of the draft proposes to place six mammal-related definitions that have code-wide application in the introductory chapter of the proposed Fish and Wildlife Code, with all other generally applicable definitional provisions.

The draft then presents a new statutory part containing provisions relating to trapping. Although most of the trapping provisions involve wild mammals, some have application to other animals as well.

Finally, the draft presents a new part containing provisions that relate *only* to mammals.

POSSIBLE ALTERNATIVE ORGANIZATION

At the September meeting, the staff discussed some shortcomings of the current model for organizing the proposed Fish and Wildlife Code. Under that

model, provisions relating to birds, mammals, and other specific types of animals would be organized as titles within a part governing hunting, thus:

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
....

The problem posed by that model is the strong implication that only *hunting*-related provisions should be included within Part 2. Consequently, a provision that relates to a particular animal, but does not relate to the *hunting* of that type of animal, would need to be located elsewhere. This will likely present some line-drawing problems (e.g., is depredator control a form of “hunting”?). And it could lead to provisions that relate to a particular type of animal being scattered in different parts of the code.

The staff mentioned the possibility of shifting the organization slightly, so that the animal-related provisions of the code would not be subordinated to “hunting.” This would, for the most part, allow all provisions relating to a particular type of animal to be grouped together, regardless of whether they relate to “hunting.”

The Commission made no decision on the organizational issue at that time. Instead, the Commission directed the staff to give the matter more thought, after having worked through more of the animal-related provisions, and raise the issue again at a future meeting.

Having worked through the mammal-related provisions, the staff sees advantages in changing the organization of the proposed code so that the animal-specific segments of code are not all contained within the portion of the code that governs hunting. There would be no need for bright-line distinctions between hunting and non-hunting provisions, and it would be easier to group related provisions together in one place.

The attached draft illustrates one way that such an organization might be implemented. Proposed Division 5 would be limited to general provisions relating to hunting, trapping, and fishing. It would then be followed by a new Division 6, entitled “Regulation of Specific Animals,” thus:

- Division 5. Hunting, Trapping, and Fishing Generally
 - Part 1. General Provisions
 - Part 2. Hunting
 - Part 3. Trapping
 - Part 4. Sport Fishing
 - Part 5. Commercial Fishing
- Division 6. Regulation of Specific Animals
 - Part 1. Birds
 - Part 2. Mammals
 - Part 3. Fish
 - Part 4. Reptiles
 - Part 5. Amphibians

Should the staff follow that organization in preparing the draft of the proposed code?

FALCONRY REVISITED

At the September 2014 meeting, the staff advised the Commission of some difficulty the staff had in determining the best location for existing code provisions relating to falconry.⁵ While the falconry provisions relate to a *method* of hunting (the use of birds of prey to hunt small animals), they do not regulate the hunting *of* birds of prey. Thus, the provisions might be best located with other general provisions on methods of hunting, rather than grouped with other provisions governing the hunting of particular types of birds.⁶

The Commission directed the staff to solicit input from the Department of Fish and Wildlife (“Department”) as to the best placement of the falconry provisions.⁷

The Department’s response is attached to this memorandum as an Exhibit. The Department recommends that the falconry provisions be placed with other provisions relating to birds of prey.⁸ That would be easier to do if the alternative organization proposed above is adopted, as it would not matter whether the falconry provisions relate to the hunting of birds of prey.

The staff recommends that **the falconry provisions be located with the other bird of prey provisions, as recommended by the Department.**

5. Falconry is a method of hunting in which birds of prey are used to hunt other birds and small mammals.

6. See First Supplement to Memorandum 2014-38.

7. Minutes (Sept. 2014), p. 4.

8. Exhibit, p. 1.

CONCLUSION

The attached draft represents an initial attempt to consolidate provisions of the existing Fish and Game Code that relate generally to mammals. 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.⁹ 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

9. 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.

TABLE OF CONTENTS

DIVISION 1. GENERAL PROVISIONS	1
Chapter 2. Definitions	1
§ 138. “Body-gripping trap”	1
§ 201.5. “Fully protected mammal”	1
§ 202. “Fur-bearing mammal”	2
§ 204. “Game mammal”	2
§ 238. “Nongame mammal”	5
§ 273. “Raw fur”	5
DIVISION 5. HUNTING, TRAPPING, AND FISHING GENERALLY	7
PART 3. TRAPPING	7
TITLE 1. GENERAL PROVISIONS	7
§ 8000. Rodents	7
TITLE 2. PROHIBITIONS	7
Chapter 1. Prohibited Traps	7
Article 1. Body-Gripping Traps	7
§ 8050. Definitions	7
§ 8055. Body-gripping traps	9
Article 2. Other Prohibited Traps	11
§ 8100. Special traps	11
Chapter 2. Use of Traps	12

§ 8105. Body-gripping traps	12
§ 8110. Mark on trap	12
§ 8115. Inspection and removal of animals	12
§ 8120. Conibear traps	13
§ 8125. Signs warning of conibear traps	13
§ 8130. Killing of trapped animal	14
Chapter 3. Other Prohibitions	15
§ 8135. Removing or disturbing trap	15
TITLE 3. LICENSES	15
Chapter 1. Trapping License	15
§ 8200. Required license	15
§ 8202. Sale of raw fur	16
§ 8205. Standards for license	17
§ 8210. Fee for license	17
§ 8215. Authorization and term	17
§ 8220. Statement of prior year's take	18
§ 8225. Issuance to nonresident	18
§ 8230. Commission regulations	19
§ 8235. Violation by licensee	19
Chapter 2. Fur Dealer License	20
§ 8300. Required license	20
§ 8305. Fee for license	20
§ 8310. Authorization and term	21
§ 8315. Fur agent license	21
§ 8320. Display of license	22
§ 8325. Record of transfers	22
§ 8330. Annual report	23
§ 8335. Confidentiality of documents	24
§ 8340. Regulation	24
§ 8350. Purchase of raw fur from unlicensed person	24
§ 8355. Revocation of license	24
DIVISION 6. REGULATION OF SPECIFIC ANIMALS	25
PART 2. MAMMALS	25
TITLE 1. GENERAL PROVISIONS	25
Chapter 1. Disease Control	25
§ 9000. Disease outbreak	25
Chapter 2. Dogs	25
Article 1. Use of Dogs to Take Mammals	26
§ 9100. Definitions	26
§ 9105. Hound tag program	26
§ 9110. Use of dog to pursue specified mammals	27
Article 2. Seizure or Dispatch of Dogs Threatening Wildlife	28
§ 9115. Capture or dispatch of dog by department	28
§ 9120. Seizure or dispatch of dog by property owner or agent	29
Chapter 3. Depredator Control	30
§ 9200. Department take of depredator	30
§ 9205. Immature mammals in den	30
§ 9210. Identification of depredator	31
TITLE 2. GAME MAMMALS	31
Chapter 1. General Provisions	31
§ 9300. Waste of game mammal	31
Chapter 2. Big Game Management Account	32
§ 9400. Account established	32
§ 9405. Use of funds	32

§ 9410. Non-profit organizations	33
§ 9415. Advisory committee	33
§ 9420. Online information	33
§ 9425. Exemptions	34
§ 9430. Accountability	34
Chapter 3. Bears	34
Article 1. General Provisions	34
§ 9450. Bear taken out of state	34
Article 2. Take Generally	34
§ 9500. Metal-jawed trap prohibited	34
§ 9505. Tag required	35
§ 9560. Use of tag	36
§ 9570. Countersigning	36
§ 9600. Retention of skin and head	36
§ 9630. Killing bear held in captivity	37
Article 3. Tags	38
§ 9635. Fee	38
§ 9640. Time period when tags are valid	38
§ 9645. Forfeiture of tags	38
Article 4. Population Management	39
§ 9650. Seasons	39
Article 5. Use of Parts	39
§ 9655. Personal use of bear parts	39
§ 9660. Commercial use of bear parts	40
§ 9665. Punishment for commercial use of bear parts	40
§ 9668. Punishment for sale or purchase if prior conviction	41
§ 9670. Use of signal-emitting device	42
Article 6. Take to Protect Property	43
§ 9675. Take to protect property	43
§ 9680. Protection of livestock or crops	43
§ 9685. Bear killing livestock	44
§ 9690. Use of dogs	45
§ 9692. Depredation permit	46
Article 7. Take for Scientific Purposes	47
§ 9695. Scientific research	47
Article 8. Miscellaneous Provisions	49
§ 9698. Bears within San Bernardino and Riverside counties	49
Chapter 4. Deer	49
Article 1. Take Generally	49
§ 9700. Required tag or permit	49
§ 9705. Tagging of deer	50
§ 9710. Countersigning	51
§ 9715. Retention of deer head	51
§ 9720. Killing deer held in captivity	52
Article 2. Tags	52
§ 9800. Issuance of tags	52
§ 9805. Design and makeup of tag	53
§ 9810. Fee	53
§ 9815. Duration of tag	54
§ 9820. Forfeiture of tags	54
Article 3. Bow Hunting	55
§ 9850. Archery season	55
§ 9855. Taking with bow and arrow	55
Article 4. Use of Parts	56

§ 9900. Commercial use of deer meat.....	56
§ 9905. Importation of deer meet.....	57
§ 9915. Use of skin or hide of deer.....	57
§ 9920. Needless waste of deer.....	57
Article 5. Population Management.....	58
§ 10000. Declaration of legislative policy.....	58
§ 10010. Deer herd management units.....	59
§ 10015. Management unit plans.....	59
§ 10020. Biennial report to Legislature and Commission.....	60
§ 10025. Annual recommendations by department.....	61
§ 10030. Affected counties.....	61
§ 10035. Department recommendations relating to deer hunting.....	63
Article 6. Take to Protect Property.....	64
§ 10040. Permit to take deer.....	64
§ 10045. Access by licensed hunters for depredator control.....	66
Article 7. Enhanced Penalties.....	67
§ 10055. Enhanced penalty for specified violations.....	67
Chapter 5. Elk.....	68
Article 1. Take Generally.....	68
§ 10120. Killing elk held in captivity.....	68
Article 2. Tags.....	69
§ 10150. Valid hunting license.....	69
§ 10155. Issuance of tags.....	69
§ 10160. Fee for tag.....	69
Article 3. Population Management.....	70
§ 10200. Regulation of take.....	70
§ 10210. Tule elk management plan.....	70
§ 10215. Relocation.....	71
Article 4. Take to Protect Property.....	71
§ 10230. Depredation permit.....	71
Article 5. Penalties.....	73
§ 10250. Enhanced penalty for specified violations.....	73
Chapter 6. Antelope.....	74
Article 1. Take Generally [Reserved].....	74
Article 2. Tags.....	74
§ 10400. Tags.....	74
§ 10405. Fee for tags.....	75
Article 3. Population Management.....	75
§ 10410. Regulation of take.....	75
Article 4. Penalties.....	76
§ 10415. Enhanced penalty for specified violations.....	76
Chapter 7. Wild Pigs.....	77
Article 1. General Provisions.....	77
§ 10600. “Wild pigs”.....	77
Article 2. Take Generally.....	77
§ 10605. Tag requirement.....	77
§ 10607. Tagging of wild pig.....	78
Article 3. Tags.....	78
§ 10610. Design and issuance of wild pig tag.....	78
§ 10615. Obtaining tag.....	78
§ 10620. Period of validity of tag.....	79
§ 10625. Fees for wild pig tag.....	79
Article 4. Population Management.....	80
§ 10650. Management plan.....	80

Article 5. Take to Protect Property	81
§ 10660. “Damage”	81
§ 10665. Protection of property	81
§ 10670. Depredation permit.....	83
§ 10675. Access by licensed hunters.....	84
Chapter 8. Rabbits and Hares	85
§ 10680. Protection of crops	85
§ 10685. Taking of jackrabbit injuring property	85
Chapter 9. Squirrels	87
§ 10690. Protection of property	87
§ 10695. Depredation permit.....	88
TITLE 3. FUR BEARING MAMMALS	89
Chapter 1. Take Generally.....	89
§ 10700. Allowed methods of taking	89
Chapter 2. Take to Protect Property	90
§ 10725. Prohibited taking or possession.....	90
Chapter 3. Red Foxes	90
§ 10730. Take for profit	90
§ 10735. Protection of property	91
Chapter 4. Muskrats.....	92
§ 10740. Protection of property	92
Chapter 5. Beavers.....	93
§ 10750. Depredation permit.....	93
Chapter 6. Miscellaneous Provisions	94
§ 10755. Propagation of fur-bearing mammals.....	94
TITLE 4. NONGAME MAMMALS.....	95
Chapter 1. General Provisions	95
§ 10775. Protection of property	95
§ 10780. Agreements relating to control of harmful nongame mammals.....	96
Chapter 2. Bobcats.....	96
Article 1. General Provisions	96
§ 10800. Definition of “pursue”	96
Article 2. Take Generally	96
§ 10805. Trapping on private land	96
§ 10815. Joshua Tree National Park	97
§ 10820. Parks, preserves, and conservancies.....	97
§ 10830. Trapping fees.....	98
§ 10835. Effect of article.....	98
Article 3. Pursuit to Protect Property	99
§ 10840. Pursuit to protect livestock or crops.....	99
§ 10845. Depredation permit.....	99
Article 3. Pursuit for Scientific Purposes.....	100
§ 10850. Pursuit in furtherance of scientific research.....	100
Chapter 3. Marine Mammals	101
§ 10900. Taking	101
§ 10905. Regulation of cat litter.....	102
Chapter 4. Rodents	103
§ 11000. “Wild rodent”	103
§ 11005. Prohibitions	103
Chapter 5. Burros.....	103
§ 11050. Prohibitions	103
TITLE 5. SPECIALLY PROTECTED MAMMALS	104
Chapter 1. Mountain Lions.....	104
Article 1. General Provisions	104

§ 11100. Prohibition against superseding regulation	104
§ 11105. “Agent”	104
Article 2. Special Protections	105
§ 11110. Prohibitions on take and possession	105
Article 3. Public Safety and Protection of Property	106
§ 11115. Removal by department	106
§ 11120. Permit to protect property	106
§ 11125. Confirmation of depredation	106
§ 11130. Permit conditions	107
§ 11135. Expedited permit	107
§ 11140. Report to department	107
§ 11145. Immediate taking of encountered depredator	108
§ 11150. Method of taking	108
§ 11155. Use of nonlethal procedures	108
Article 4. Take for Scientific Purposes	109
§ 11160. Research	109
TITLE 6. FULLY PROTECTED MAMMALS	110
Chapter 1. General Provisions	110
§ 11200. Take generally prohibited	110
§ 11205. Take for scientific purposes	111
§ 11210. Imported animal	112
§ 11215. Penalty	112
Chapter 2. Bighorn Sheep	112
Article 1. Bighorn Sheep Generally	112
§ 11300. Legislative declaration of policy	112
§ 11305. Development of plans for population management	112
Article 2. Nelson Bighorn Sheep	113
§ 11310. Population management	113
§ 11315. Tags	114
§ 11320. Use of revenue	115
Article 3. Penalties	115
§ 11325. Punishment for taking	115
§ 11330. Enhanced penalty for specified violations	115
DISPOSITION OF FORMER LAW	117

DIVISION 1. GENERAL PROVISIONS

....

CHAPTER 2. DEFINITIONS

§ 138. “Body-gripping trap”

138. (a) A body-gripping trap is a trap that grips a mammal’s body or body part, including, but not limited to, the following:

- (1) A steel-jawed leghold trap,
- (2) A padded-jaw leghold trap,
- (3) A conibear trap.
- (4) A snare.

(b) Notwithstanding subdivision (a), the following are not body-gripping traps:

- (1) A cage or box trap.
- (2) A net.
- (3) A suitcase-type live beaver trap.
- (4) A common rat or mouse trap.

Comment. Section 138 restates the second and third sentences of former Fish and Game Code Section 3003.1(a) without substantive change.

Staff Note. Proposed Section 138 is intended to restate the second and third sentences of existing Fish and Game Code Section 3003.1(a) to improve the clarity of those sentences, without changing their substantive effect. The existing sentences read as follows:

“A body-gripping trap is one that grips the mammal’s body or body part, including, but not limited to, steel-jawed leghold traps, padded-jaw leghold traps, conibear traps, and snares. Cage and box traps, nets, suitcase-type live beaver traps, and common rat and mouse traps shall not be considered body-gripping traps.”

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

§ 201.5. “Fully protected mammal”

201.5. “Fully protected mammal” means any of the following mammals:

(a) Bighorn sheep (*Ovis canadensis*), except mature Nelson bighorn rams (subspecies *Ovis canadensis nelsoni*) when the object of sport hunting authorized by subdivision (b) of Section **4902**.

- (b) Guadalupe fur seal (*Arctocephalus townsendi*).
- (c) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).
- (d) Northern elephant seal (*Mirounga angustirostris*).
- (e) Pacific right whale (*Eubalaena sieboldi*).
- (f) Ring-tailed cat (genus *Bassariscus*).
- (g) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- (h) Southern sea otter (*Enhydra lutris nereis*).
- (i) Wolverine (*Gulo luscus*).

1 **Comment.** Section 201.5 continues former Fish and Game Code Section 4700(b) without
2 change, except as indicated below:

3 The following nonsubstantive changes are made:

- 4 • The words “The following are fully protected mammals” are replaced with “Fully
5 protected mammal’ means any of the following mammals.”
- 6 • The listed mammals are alphabetized.
- 7 • The words “Nelson bighorn sheep” are replaced with “mature Nelson bighorn rams.”
- 8 • The words “as provided by” are replaced with “when the object of hunting authorized
9 by.” Cf. Section 204(a)(6) (Nelson bighorn sheep is game mammal when the object of
10 authorized sport hunting).
- 11 • A cross-reference to former Fish and Game Code Section 4902 is updated.

12  **Staff Note.** Existing Fish and Game Code Section 4700(b)(2) (which would be continued by
13 proposed Section 201.5(a)) provides that bighorn sheep in general are fully protected mammals,
14 “except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision
15 (b) of Section 4902.” However, existing Section 4902(b) provides only for the hunting of mature
16 Nelson bighorn rams, and appears to provide that all other Nelson bighorn sheep remain fully
17 protected mammals. Proposed Section 201.5 would therefore except only mature Nelson bighorn
18 rams from the classification of bighorn sheep as fully protected mammals.

19 **The staff invites comment on whether this revision would cause any substantive change in**
20 **the meaning of existing Section 4700(b).**

21 **§ 202. “Fur-bearing mammal”**

22 202. “Fur-bearing mammal” means any of the following mammals:

- 23 (a) Badger.
- 24 (b) Beaver.
- 25 (c) Fisher.
- 26 (d) Gray fox.
- 27 (e) Kit fox.
- 28 (f) Mink.
- 29 (g) Muskrat.
- 30 (h) Pine marten.
- 31 (i) Raccoon.
- 32 (j) Red fox.
- 33 (k) River otter.

34 **Comment.** Section 202 continues former Fish and Game Code Section 4000 without change,
35 except as indicated below:

36 The following nonsubstantive changes are made:

- 37 • Subdivision designations are added.
- 38 • The words “The following are fur-bearing mammals” are replaced with ““Fur-bearing
39 mammal’ means any of the following mammals.”
- 40 • The listed mammals are alphabetized.

41 **§ 204. “Game mammal”**

42 204. (a) “Game mammal” means any of the following mammals:

- 43 (1) Black and brown or cinnamon bears (genus *Euarctos*).
- 44 (2) Deer (genus *Odocoileus*).
- 45 (3) Elk (genus *Cervus*).

1 (4) Jackrabbits and varying hares (genus *Lepus*), cottontails, brush rabbits,
2 pigmy rabbits (genus *Sylvilagus*).

3 (5) Mature Nelson bighorn rams (subspecies *Ovis canadensis nelsoni*), only
4 when the object of sport hunting authorized by **subdivision (b) of Section 4902**.

5 (6) Mountain lions (genus *Felis*).

6 (7) Prong-horned antelope (genus *Antilocapra*).

7 (8) Tree squirrels (genus *Sciurus* and *Tamiasciurus*).

8 (9) Wild pigs, including feral pigs and European wild boars (genus *Sus*).

9 (b) Notwithstanding subdivision (a) or any other provision of this code, the
10 mountain lion (genus *Felis*) shall not be listed as, or considered to be, a game
11 mammal by the department or the commission.

12 (c) Section 675 does not apply to subdivision (b). Neither the commission nor
13 the department shall adopt any regulation that conflicts with or supersedes this
14 subdivision, or subdivision (b).

15 **Comment.** Subdivisions (a)(1)-(5) and (a)(7)-(9) of Section 204 continue former Fish and
16 Game Code Section 3950(a) without change, except as indicated below:

17 The following nonsubstantive changes are made:

- 18 • Subdivision designations are added.
- 19 • The words “Game mammals are” are replaced with “‘Game mammal’ means any of the
20 following mammals.”
- 21 • The listed mammals are alphabetized.

22 Subdivision (a)(5) continues former Fish and Game Code Section 3950(b) without change,
23 except as indicated below:

24 The following nonsubstantive changes are made:

- 25 • The words “Nelson bighorn sheep” are replaced with “mature Nelson bighorn rams.”
- 26 • The words “for the purposes of sport hunting described in” are replaced with “‘when
27 the object of sport hunting authorized by.’”
- 28 • A cross-reference to former Fish and Game Code Section 4902 is updated.

29 Subdivisions (b) and (c) restate former Fish and Game Code Section 3950.1 without
30 substantive change.

31 **Staff Notes.** (1) Existing Fish and Game Code Section 3950(b) (which would be continued by
32 proposed Section 204(a)(5)) provides that “Nelson bighorn sheep (subspecies *Ovis canadensis*
33 *nelsoni*) are game mammals only for the purposes of sport hunting described in subdivision (b) of
34 Section 4902.” However, existing Section 4902(b) provides only for the sport hunting of mature
35 Nelson bighorn rams. Proposed Section 204(a)(5) would therefore classify only mature Nelson
36 bighorn rams as game mammals.

37 **The staff invites comment on whether this revision would cause any substantive change in
38 the meaning of existing Section 3950(b).**

39 (2) Existing Fish and Game Code Section 3950(a) (which would be continued by proposed
40 Section 204(a)), and existing Section 3950.1 (which would be continued by proposed Section
41 204(b) and (c)) both address the status of the mountain lion as a game mammal. The interplay
42 between the two sections is less than clear, and it would be helpful if the proposed law could
43 clarify the existing ambiguity. However, that effort is complicated by the fact that Section 3950.1
44 is an initiative statute (added to the Fish and Game Code in 1990 by Proposition 117), and subject
45 to special rules governing its amendment.

46 Under Article 2, Section 10(c) of the California Constitution, an initiative statute may be
47 amended or repealed by the Legislature only when expressly permitted by the text of the initiative

1 statute. The text of Proposition 117 provides in pertinent part that any section added to the Fish
2 and Game Code by the proposition may be subsequently amended by the Legislature “only by a
3 statute approved by a vote of four-fifths of the members of both houses of the Legislature,” and
4 that any such amendment “shall be consistent with, and further the purposes of,” the proposition.
5 The text does not address a subsequent repeal of any section added by the proposition.

6 **The status of Section 3950.1 as an initiative statute raises two issues relevant to its**
7 **recodification, as well as the recodification of existing Section 3950:**

8 (1) Proposed Section 204(b) and (c) is intended to restate Section 3950.1 solely to improve its
9 clarity, without changing its substantive effect. The existing provision reads as follows:

10 “3950.1. (a) Notwithstanding Section 3950 or any other provision of this code, the mountain
11 lion (genus *Felis*) shall not be listed as, or considered to be, a game mammal by the department or
12 the commission.

13 (b) Section 219 does not apply to this section. Neither the commission nor the department shall
14 adopt any regulation that conflicts with or supersedes this section.”

15 The text of Section 3950.1 suggests a possible intent to preclude a mountain lion being
16 considered a game mammal, for *all* purposes relevant to the Fish and Game Code. See also
17 Section 4800(a), which was also added to the Fish and Game Code by Proposition 117 (“The
18 mountain lion (genus *Puma*) is a specially protected mammal under the laws of this state.”).

19 If that overarching preclusion was intended by Proposition 117, the enactment of a revised
20 version of Section 3950 listing the mountain lion as a game mammal would likely violate Article
21 2, Section 10(c) of the California Constitution, despite not altering the language of Section
22 3950.1. See *Proposition 103 Enforcement Project v. Quackenbush*, 64 Cal. App. 4th 1473, 1485;
23 76 Cal. Rptr. 2d 342 (1998) (test is whether new enactment “adds to or takes away from”
24 initiative statute, regardless of mechanism).

25 However, three facts cause the staff to question whether or not that preclusion was intended by
26 Proposition 117.

27 First, as the text of Section 3950.1 suggests, at the time Proposition 117 was proposed, Section
28 3950 listed the mountain lion as a game mammal. If the intent of the proposition was to
29 effectively “de-list” the mountain lions as a game mammal for all purposes, the proposition could
30 have additionally included an amendment to Section 3950 to that effect.

31 Further, the text of Section 3950.1 does not simply state that a mountain lion shall not be
32 considered a game mammal “for all purposes.” Instead, the section expressly only limits the
33 authority of the Department of Fish and Wildlife and the Fish and Game Commission to list or
34 consider the mountain lion to be a game mammal (e.g., for purposes of any adopted regulation).
35 At least on its face, the section does not preclude the *Legislature* from classifying the mountain
36 lion as a game mammal, for whatever purpose the Legislature deems relevant.

37 Finally, there is evidence that both the Legislature and perhaps the proponents of Proposition
38 117 understand Section 3950.1 to have a narrower meaning. In 1992, two years after the passage
39 of Proposition 117 and the enactment of Section 3950.1, the Legislature repealed and re-enacted
40 Section 3950, and in the re-enacted section continued to list mountain lions as a game mammal.
41 See 1992 Cal. Stat. ch. 1370 (AB 3193 (Felando)). If the intent of Proposition 117 had been to
42 preclude classification of the mountain lion as a game mammal for all purposes, that subsequent
43 enactment, if challenged, would almost certainly have been found to violate Article 2, Section
44 10(c) of the California Constitution.

45 **The staff invites comment on whether proposed Section 204 should be continued in the**
46 **proposed law as indicated above, or whether the reference to mountain lions in Section**
47 **204(a)(5) should be deleted.**

48 (2) Because Section 3950.1 is an initiative statute, there is also a theoretical concern that even a
49 purely nonsubstantive recodification of that section (which would necessarily repeal the existing
50 section) might violate Article 2, Section 10(c) of the California Constitution, unless the
51 recodification was enacted by the four-fifths vote called for by the text of Proposition 117.
52 However, courts have held that, for the provisions of Article 2, Section 10(c), a legislative

1 enactment only amends an initiative statute when it “prohibits what the initiative authorizes, or
2 authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48 Cal. 4th 564,
3 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010). (The staff has located no authority directly
4 addressing whether this principle also applies to a repeal of an initiative statute.)

5 Based on interpretative case law, the office of Legislative Counsel has informally expressed to
6 staff its view that the repeal and recodification of an initiative statute in a single enactment is not
7 precluded by Article 2, Section 10(c), if the recodification does not substantively change the
8 meaning of the repealed initiative statute.

9 **The staff invites comment on whether the proposed recodification of Section 3950.1**
10 **would substantively change the meaning of that provision, or would for some other reason**
11 **violate Article 2, Section 10(c) of the California Constitution.**

12 **§ 238. “Nongame mammal”**

13 238. “Nongame mammal” means any of the following mammals:

14 (a) A mammal occurring naturally in California that is not a game mammal,
15 fully protected mammal, or fur-bearing mammal.

16 (b) A house cat (*Felis domesticus*) found within the limits of a fish and game
17 refuge, except if in the residence of its owner or on the grounds adjacent to that
18 residence.

19 **Comment.** Subdivision (a) of Section 238 restates the first sentence of former Fish and Game
20 Code Section 4150 without substantive change.

21 Subdivision (b) restates former Fish and Game Code Section 4151 without substantive change.

22  **Staff Notes.** (1) Proposed Section 238(a) is intended to restate the first sentence of existing
23 Fish and Game Code Section 4150 to improve the clarity of that provision, without changing its
24 substantive effect. The existing provision reads as follows:

25 “All mammals occurring naturally in California which are not game mammals, fully protected
26 mammals, or fur-bearing mammals, are nongame mammals.”

27 **The staff invites comment on whether the restatement would cause any substantive**
28 **change in the meaning of the provision.**

29 (2) Proposed Section 238(b) is intended to restate existing Fish and Game Code Section 4151
30 to improve the clarity of that provision, without changing its substantive effect. The existing
31 provision reads as follows:

32 “Any house cat (*Felis domesticus*) found within the limits of any fish and game refuge is a
33 nongame mammal, unless it is in the residence of its owner or upon the grounds of the owner
34 adjacent to such residence.”

35 **The staff invites comment on whether the restatement would cause any substantive**
36 **change in the meaning of the provision.**

37 **§ 273. “Raw fur”**

38 273. “Raw fur” means any of the following:

39 (a) A fur, pelt, or skin that has not been tanned or cured.

40 (b) A pelt that is salt-cured or sun-cured.

41 **Comment.** Section 273 restates the second sentence of former Fish and Game Code Section
42 4005(a) without substantive change.

43  **Staff Note.** Proposed Section 273 is intended to restate the second sentence of existing Fish
44 and Game Code Section 4005(a) to improve the clarity of the provision, without changing its
45 substantive effect. The existing provision reads as follows:

1 “‘Raw fur’ means any fur, pelt, or skin that has not been tanned or cured, except that salt-cured
2 or sun-cured pelts are raw furs.”

3 **The staff invites comment on whether the restatement would cause any substantive**
4 **change in the meaning of the provision.**

....

- 1 (4) Fisher.
- 2 (5) Gray fox.
- 3 (6) Kit fox.
- 4 (7) Mink.
- 5 (8) Muskrat.
- 6 (9) Pine marten.
- 7 (10) Raccoon.
- 8 (11) Red fox.
- 9 (12) River otter.
- 10 (13) Silver fox.
- 11 (14) Wolverine.
- 12 (b) “Game mammal” means any of the following mammals:
- 13 (1) Black and brown or cinnamon bears (genus *Euarctos*).
- 14 (2) Deer (genus *Odocoileus*).
- 15 (3) Elk (genus *Cervus*).
- 16 (4) Jackrabbits and varying hares (genus *Lepus*), cottontails, brush rabbits,
- 17 pigmy rabbits (genus *Sylvilagus*).
- 18 (5) Mountain lions (genus *Felis*).
- 19 (6) Prong-horned antelope (genus *Antilocapra*).
- 20 (7) Tree squirrels (genus *Sciurus* and *Tamiasciurus*).
- 21 (8) Wild pigs, including feral pigs and European wild boars (genus *Sus*).
- 22 (c) “Nongame mammal” means any of the following mammals:
- 23 (1) A mammal occurring naturally in California that is not a game mammal,
- 24 fully protected mammal, or fur-bearing mammal.
- 25 (2) A house cat (*Felis domesticus*) found within the limits of a fish and game
- 26 refuge, except if in the residence of its owner or on the grounds adjacent to that
- 27 residence.
- 28 (d) “Protected mammal” means any of the following mammals:
- 29 (1) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies
- 30 *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.
- 31 (2) Guadalupe fur seal (*Arctocephalus townsendi*).
- 32 (3) Mountain lion (genus *Felis*).
- 33 (4) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).
- 34 (5) Northern elephant seal (*Mirounga angustirostris*).
- 35 (6) Pacific right whale (*Eubalaena sieboldi*).
- 36 (7) Ring-tailed cat (genus *Bassariscus*).
- 37 (8) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- 38 (9) Southern sea otter (*Enhydra lutris nereis*).
- 39 (10) Wolverine (*Gulo luscus*).

40 **Comment.** Section 8050 restates former Fish and Game Code Section 3003.1(d) without
41 substantive change.

42 **Staff Note.** Existing Fish and Game Code Section 3003.1 is an initiative statute, added to the
43 Fish and Game Code in 1998 by Proposition 4, Section 1. Under Article 2, Section 10(c) of the

1 California Constitution, an initiative statute may be amended or repealed by the Legislature only
2 when expressly permitted by the text of the initiative statute. There is nothing in the text of
3 Proposition 4 that authorizes a subsequent legislative amendment or repeal of Section 3003.1.

4 However, courts have held that a legislative enactment does not amend an initiative statute for
5 the purposes of Article 2, Section 10(c), unless the enactment “prohibits what the initiative
6 authorizes, or authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48
7 Cal. 4th 564, 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010), *Proposition 103 Enforcement*
8 *Project v. Quackenbush*, 64 Cal. App. 4th 1473, 1486; 76 Cal. Rptr. 2d 342 (1998).

9 Based on this authority, the office of Legislative Counsel has informally expressed that a repeal
10 and recodification of an initiative statute in a single enactment (as would be effected by the
11 enactment of the proposed law), is permissible under Article 2, Section 10(c), provided that the
12 recodification does not substantively change the meaning of the repealed initiative statute.

13 Proposed Section 8050 is not intended to substantively change the meaning of existing Section
14 3003.1(d), but rather is intended to restate the existing provision only to improve its clarity. The
15 existing provision reads as follows:

16 “3003.1. Notwithstanding Sections 1001, 1002, 4002, 4004, 4007, 4008, 4009.5, 4030, 4034,
17 4042, 4152, 4180, or 4181:

18

19 (d) For purposes of this section, fur-bearing mammals, game mammals, nongame mammals,
20 and protected mammals are those mammals so defined by statute on January 1, 1997.”

21 Because over time it will be increasingly difficult to accurately identify the historical
22 definitions referenced in the existing provision, proposed Section 8050 would replace those
23 references with the text of those historical definitions.

24 In general, that text is continued verbatim, except for purely stylistic improvements such as the
25 addition of subdivision designations, and alphabetical arrangement. However, one reference in
26 existing Section 3003.1(d) is to a category of mammals identified as “protected mammals,” a
27 term for which there was no statutory definition in the Fish and Game Code in 1997 (nor at the
28 present time).

29 Proposed Section 8050(d) would replace that reference with a definition of the term that refers
30 to those mammals defined as a “fully protected mammal” in 1997 (see Section 4700(b)), and to a
31 mountain lion, which was identified as a “specially protected mammal” in 1997 (see Section
32 4800(a)). The staff found no other provision in the Fish and Game Code as it existed in 1997 that
33 could reasonably be interpreted as defining a “protected mammal.”

34 **The staff invites comment on whether the proposed revision of Section 3003.1(d) would**
35 **substantively change the meaning of that provision, or would for some other reason violate**
36 **Article 2, Section 10(c) of the California Constitution.**

37 **§ 8055. Body-gripping traps**

38 8055. (a) Notwithstanding **Sections 1001, 1002, 4002, 4004, 4007, 4008,**
39 **4009.5, 4030, 4034, 4042, 4152, 4180, 4181, 12000, or 12002:**

40 (1) It is unlawful to use a body-gripping trap to trap a fur-bearing mammal or
41 nongame mammal for either recreation or commerce in fur.

42 (2) It is unlawful to buy, sell, barter, or otherwise exchange for profit, or offer to
43 buy, sell, barter, or otherwise exchange for profit, the raw fur, as defined in
44 Section 273, of a fur-bearing mammal or nongame mammal that was trapped in
45 this state with a body-gripping trap.

46 (3) It is unlawful to use or authorize the use of any steel-jawed leghold trap,
47 padded or otherwise, to capture a game mammal, fur-bearing mammal, nongame
48 mammal, protected mammal, or dog or cat, except as provided in this paragraph.
49 A federal, state, county, or municipal government employee, or that employee’s

1 duly authorized agent, may use or authorize the use of a padded-jaw leghold trap
2 in the extraordinary case in which use of that trap is the only method available to
3 protect human health or safety.

4 (b) A violation of this section, or any rule or regulation adopted pursuant to this
5 section, is punishable by a fine of not less than three hundred dollars (\$300) or
6 more than two thousand dollars (\$2,000), or by imprisonment in the county jail for
7 not more than one year, or by both that fine and imprisonment. The Legislature
8 may increase, but may not decrease, these penalties.

9 **Comment.** Subdivision (a) of Section 8055 restates the first sentence of former Fish and Game
10 Code Section 3003.1(a), subdivision (b), and subdivision (c) without substantive change.

11 Subdivision (b) continues the part of former Fish and Game Code Section 12005.5 applicable
12 to former Fish and Game Code Section 3003.1 without change, except as indicated below:

13 The following nonsubstantive changes are made:

- 14 • The words “Notwithstanding Sections 12000 and 12002” are deleted as superfluous.
- 15 • The words “pursuant thereto” are replaced with “pursuant to this section.”

16 **Staff Notes.** (1) The definition of “body-gripping trap” in existing Fish and Game Code
17 Section 3003.1(b) is continued as a generally applicable definition in proposed Section 138.

18 (2) Existing Fish and Game Codes Section 3003.1 and 12005.5 are initiative statutes, added to
19 the Fish and Game Code in 1998 by Proposition 4, Section 1. Under Article 2, Section 10(c) of
20 the California Constitution, an initiative statute may be amended or repealed by the Legislature
21 only when expressly permitted by the text of the initiative statute. The only language in the text of
22 Proposition 4 that addresses a subsequent legislative amendment or repeal of either code section
23 is the last sentence of Section 12005.5, which provides, “The Legislature may increase, but may
24 not decrease, these penalties.”

25 However, courts have held that a legislative enactment does not amend an initiative statute for
26 the purposes of Article 2, Section 10(c), unless the enactment “prohibits what the initiative
27 authorizes, or authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48
28 Cal. 4th 564, 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010), *Proposition 103 Enforcement*
29 *Project v. Quackenbush*, 64 Cal. App. 4th 1473, 1486; 76 Cal. Rptr. 2d 342 (1998).

30 Based on this authority, the office of Legislative Counsel has informally expressed that a repeal
31 and recodification of an initiative statute in a single enactment (as would be effected by the
32 enactment of the proposed law), is permissible under Article 2, Section 10(c), provided that the
33 recodification does not substantively change the meaning of the repealed initiative statute.

34 Proposed Section 8055 is not intended to substantively change the meaning of either existing
35 Section 3003.1(a)-(c) or 12005.5, but rather is intended to restate the existing provisions only to
36 improve their clarity. Existing Section 3003.1(a)-(c) reads as follows:

37 “3003.1. Notwithstanding Sections 1001, 1002, 4002, 4004, 4007, 4008, 4009.5, 4030, 4034,
38 4042, 4152, 4180, or 4181:

39 (a) It is unlawful for any person to trap for the purposes of recreation or commerce in fur any
40 fur-bearing mammal or nongame mammal with any body-gripping trap. A body-gripping trap is
41 one that grips the mammal’s body or body part, including, but not limited to, steel-jawed leghold
42 traps, padded-jaw leghold traps, conibear traps, and snares. Cage and box traps, nets, suitcase-
43 type live beaver traps, and common rat and mouse traps shall not be considered body-gripping
44 traps.

45 (b) It is unlawful for any person to buy, sell, barter, or otherwise exchange for profit, or to offer
46 to buy, sell, barter, or otherwise exchange for profit, the raw fur, as defined by Section 4005, of
47 any fur-bearing mammal or nongame mammal that was trapped in this state, with a body-gripping
48 trap as described in subdivision (a).

49 (c) It is unlawful for any person, including an employee of the federal, state, county, or
50 municipal government, to use or authorize the use of any steel-jawed leghold trap, padded or

1 otherwise, to capture any game mammal, fur-bearing mammal, nongame mammal, protected
2 mammal, or any dog or cat. The prohibition in this subdivision does not apply to federal, state,
3 county, or municipal government employees or their duly authorized agents in the extraordinary
4 case where the otherwise prohibited padded-jaw leghold trap is the only method available to
5 protect human health or safety.”

6 Existing Fish and Game Code Section 12005.5 reads as follows:

7 “Notwithstanding Sections 12000 and 12002, a violation of Section 3003.1 or 3003.2, or any
8 rule or regulation adopted pursuant thereto, is punishable by a fine of not less than three hundred
9 dollars (\$300) or more than two thousand dollars (\$2,000), or by imprisonment in the county jail
10 for not more than one year, or by both that fine and imprisonment. The Legislature may increase,
11 but may not decrease, these penalties.”

12 (The portion of this provision applicable to existing Section 3003.2 would be continued a
13 separate provision in the proposed law.)

14 **The staff invites comment on whether the proposed revision of Section 3003.1(a)-(c) or**
15 **12005.5 would substantively change the meaning of any of those provisions, or would violate**
16 **Article 2, Section 10(c) of the California Constitution for any other reason.**

17 (3) The prohibition in existing Section 3003.1(a) against using a body-gripping trap to trap a
18 fur-bearing mammal or nongame mammal for either recreation or commerce in fur appears to be
19 completely subsumed by a blanket prohibition against use of the same trap, for either of the same
20 purposes, in existing Section 4004(b).

21 **The staff invites comment on the relationship between existing Section 3003.1(a) and**
22 **existing Section 4004(b), and whether the two provisions might be merged or reconciled. See**
23 **also proposed Section 8105 (continuing Section 4004(b)).**

24 (4) In 2002, a federal appellate court in *National Audubon Society, Inc. v. Davis*, 307 F.3d 835
25 (2002) held that the prohibition in existing Fish and Game Code Section 3003.1(c) (which would
26 be continued by proposed Section 8005(a)(3)) is preempted by (a) the federal Endangered Species
27 Act of 1973 (16 USCS § 1531 *et seq.*), to the extent that provision prevents federal agencies from
28 protecting species listed pursuant to that act, and (b) the National Wildlife Refuge System
29 Improvement Act of 1997 (16 USCS 668dd *et seq.*), to the extent the provision regulates federal
30 trapping on National Wildlife Refuges within the state.

31 Article 2. Other Prohibited Traps

32 § 8100. Special traps

33 8100. It is unlawful to use a steel-jawed leghold trap, or a trap with saw-toothed
34 or spiked jaws.

35 **Comment.** Section 8100 continues former Fish and Game Code Section 4004(a) without
36 change, except as indicated below:

37 The following nonsubstantive changes are made:

- 38 • The words “do any of the following:” are deleted as superfluous.
- 39 • The words “use any” are replaced with “a.”

40 **Staff Note.** Existing Fish and Game Code Section 4004 is located in a chapter entitled “Fur-
41 Bearing Mammals.” However, the prohibitions in the section do not on their face appear to be
42 limited in their application to only those mammals, and existing Section 4 provides that
43 “Division, part, chapter, article, and section headings do not in any manner affect the scope,
44 meaning, or intent of the provisions of this code.”

45 **The staff invites comment as to whether relocation of the prohibitions in Section 4004 as**
46 **proposed would substantively change the meaning of any provision in Section 4004.**

CHAPTER 2. USE OF TRAPS

§ 8105. Body-gripping traps

8105. It is unlawful to use a body-gripping trap for recreation or commerce in fur.

Comment. Section 8105 continues former Fish and Game Code Section 4004(b) without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “do any of the following:” are deleted as superfluous.
- The words “the purpose of” are deleted as superfluous.

Staff Note. The definition of “body-gripping trap” referenced in existing Fish and Game Code Section 4004(b) is continued as a generally applicable definition in proposed Section 138.

§ 8110. Mark on trap

8110. (a) It is unlawful to set or maintain a trap that does not bear a mark as follows:

(1) If set or maintained by a federal, state, county, or city agency, a mark containing the name of that agency.

(2) If set pursuant to **Section 4152 or 4180**, an identifying mark as specified by the department.

(3) In all other cases, a number or other identifying mark registered to the department.

(b) No registration fee shall be charged pursuant to this section.

Comment. Section 8110 restates former Fish and Game Code Section 4004(c) without substantive change.

Staff Note. Proposed Section 8110 is intended to restate existing Fish and Game Code Section 4004(c) to improve the clarity of that provision, without changing its substantive effect. The existing provision reads as follows:

“It is unlawful to do any of the following:

....

(c) Set or maintain traps that do not bear a number or other identifying mark registered to the department or, in the case of a federal, state, county, or city agency, bear the name of that agency, except that traps set pursuant to Section 4152 or 4180 shall bear an identifying mark in a manner specified by the department. No registration fee shall be charged pursuant to this subdivision.”

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

§ 8115. Inspection and removal of animals

8115. (a) It is unlawful to fail to visit and remove all animals from traps at least once daily.

(b) If trapping is done pursuant to **Section 4152 or 4180**, the inspection and removal shall be done by one of the following:

(1) The person who sets the trap.

(2) The owner of the land where the trap is set.

(3) An agent of a person listed in paragraph (1) or (2).

1 (c) The punishment for a violation of this section is a fine of not more than two
2 thousand dollars (\$2,000), imprisonment in the county jail for not more than one
3 year, or both the fine and imprisonment.

4 **Comment.** Subdivisions (a) and (b) of Section 8115 restate former Fish and Game Code
5 Section 4004(d) without substantive change.

6 Subdivision (c) continues the part of former Fish and Game Code Section 12002 applicable to
7 former Fish and Game Code Section 4004(d) without change.

8 **Staff Note.** Proposed Section 8115 is intended to restate existing Fish and Game Code
9 Section 4004(d) to improve the clarity of that provision, without changing its substantive effect.
10 The existing provision reads as follows:

11 “It is unlawful to do any of the following:

12

13 (d) Fail to visit and remove all animals from traps at least once daily. If the trapping is done
14 pursuant to Section 4152 or 4180, the inspection and removal shall be done by the person who
15 sets the trap or the owner of the land where the trap is set or an agent of either.”

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

18 **§ 8120. Conibear traps**

19 8120. (a) It is unlawful to use a conibear trap that is larger than 6 inches by 6
20 inches, unless the trap is partially or wholly submerged in water.

21 (b) Notwithstanding subdivision (a), a lawfully set conibear trap that is 10
22 inches by 10 inches or less may be set pursuant to subdivision (g) of Section 465.5
23 of Title 14 of the California Code of Regulations, unless prohibited by the
24 department as a permit condition.

25 **Comment.** Section 8120 restates former Fish and Game Code Section 4004(e) without
26 substantive change.

27 **Staff Note.** Proposed Section 8120 is intended to restate existing Fish and Game Code
28 Section 4004(e) to improve the clarity of that provision, without changing its substantive effect.
29 The existing provision reads as follows:

30 “It is unlawful to do any of the following:

31

32 (e) Use a conibear trap that is larger than 6 inches by 6 inches, unless partially or wholly
33 submerged in water. Unless prohibited by the department as a permit condition, a lawfully set
34 conibear trap that is 10 inches by 10 inches or less may be set pursuant to subdivision (g) of
35 Section 465.5 of Title 14 of the California Code of Regulations.”

36 **The staff invites comment on whether the restatement would cause any substantive
37 change in the meaning of the provision.**

38 **§ 8125. Signs warning of conibear traps**

39 8125. (a) When any conibear trap is set on publicly owned land or land
40 expressly open to public use, it is unlawful to fail to post signs at each entrance
41 and exit to the property indicating the presence of conibear traps, and at least four
42 additional signs within a radius of 50 feet of each trap, one in each cardinal
43 direction, with lettering that is a minimum of three inches high stating: “Danger!
44 Traps Set For Wildlife. Keep Out.”

1 (b) Signs required to be posted by this section shall be maintained and checked
2 daily.

3 **Comment.** Section 8125 restates former Fish and Game Code Section 4004(f) without
4 substantive change.

5 **Staff Note.** Proposed Section 8125 is intended to restate existing Fish and Game Code
6 Section 4004(f) to improve the clarity of that provision, without changing its substantive effect.
7 The existing provision reads as follows:

8 “It is unlawful to do any of the following:

9 ...

10 (f) When any conibear trap is set on publicly owned land or land expressly open to public use,
11 fail to post signs at every entrance and exit to the property indicating the presence of conibear
12 traps and at least four additional signs posted within a radius of 50 feet of the trap, one in each
13 cardinal direction, with lettering that is a minimum of three inches high stating: “Danger! Traps
14 Set For Wildlife. Keep Out.” Signs shall be maintained and checked daily.”

15 **The staff invites comment on whether the restatement would cause any substantive**
16 **change in the meaning of the provision.**

17 **§ 8130. Killing of trapped animal**

18 8130. (a) It is unlawful to kill any trapped mammal by any of the following
19 methods:

20 (1) Intentional drowning.

21 (2) Injection with any chemical not sold for the purpose of euthanizing animals.

22 (3) Thoracic compression, commonly known as chest crushing.

23 (b) The prohibition in subdivision (a) does not apply to either of the following:

24 (1) A lawfully set conibear trap that is set partially or wholly submerged in
25 water to trap beaver or muskrat.

26 (2) A lawfully set colony trap that is set in water to trap muskrat.

27 **Comment.** Section 8130 restates former Fish and Game Code Section 4004(g) without
28 substantive change.

29 **Staff Notes.** (1) Proposed Section 8130 is intended to restate existing Fish and Game Code
30 Section 4004(g) to improve its clarity, without changing its substantive effect. The existing
31 provision reads as follows:

32 “4004. It is unlawful to do any of the following:

33 ...

34 (g) Kill any trapped mammal in accordance with this section by intentional drowning, injection
35 with any chemical not sold for the purpose of euthanizing animals, or thoracic compression,
36 commonly known as chest crushing. This subdivision shall not be construed to prohibit the use of
37 lawfully set conibear traps set partially or wholly submerged in water for beaver or muskrat or the
38 use of lawfully set colony traps set in water for muskrat.”

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

41 (2) Section 4004(g) prohibits killing any trapped mammal “in accordance with this section.” In
42 proposed Section 8130, that limiting language has been deleted. The staff sees no policy reason
43 why the prohibition on killing trapped mammals by certain methods should only apply to
44 mammals that were trapped lawfully.

45 **The staff invites comment on whether the deletion of that language creates a problem.**

1 (3) Although animals that are trapped are normally mammals, is it intended that this provision
2 not apply to any other type of animal that is trapped, whether intentionally or inadvertently? The
3 staff notes that none of the other prohibitions in existing Section 4004 (which would be continued
4 by the other proposed provisions in this chapter) are limited in their scope to mammals.

5 **The staff invites comment on whether the word “mammal” in proposed Section 8130(a)**
6 **should be revised to read “animal.”**

7 CHAPTER 3. OTHER PROHIBITIONS

8 § 8135. Removing or disturbing trap

9 8135. (a) It is unlawful to remove or disturb the trap of any person with a valid
10 trapping license while the trap is being used by the licensee on public land, or on
11 land where the licensee has permission to trap.

12 (b) Subdivision (a) does not prohibit the removal or disturbance of a trap by an
13 employee of the department engaged in the performance of official duties.

14 **Comment.** Section 8135 continues former Fish and Game Code Section 4009 without change,
15 except as indicated below:

16 The following nonsubstantive changes are made:

- 17 • Subdivision designations are added.
- 18 • The word “licensee” is replaced with “person with a valid trapping license.”
- 19 • The words “This section” are replaced with “Subdivision (a).”
- 20 • The words “do not apply to any employee” are replaced with “do not prohibit the
21 removal or disturbance of a trap by an employee.”
- 22 • The word “while” is deleted as superfluous.

23 TITLE 3. LICENSES

24 CHAPTER 1. TRAPPING LICENSE

25 § 8200. Required license

26 8200. (a) Except as otherwise provided in this section, any person who traps fur-
27 bearing mammals or nongame mammals, designated by the commission or who
28 sells raw furs of those mammals, is required to obtain a trapping license.

29 (b) The license requirement imposed by this section does not apply to any of the
30 following:

31 (1) Fur dealers.

32 (2) Officers or employees of federal, county, or city agencies or the department,
33 when acting in their official capacities.

34 (3) Officers or employees of the Department of Food and Agriculture, when
35 acting pursuant to the Food and Agricultural Code pertaining to pests, or when
36 acting pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part
37 1 of Division 4 of the Food and Agricultural Code.

1 (4) Structural pest control operators licensed pursuant to Chapter 14
2 (commencing with Section 8500) of Division 3 of the Business and Professions
3 Code, when trapping rats, mice, voles, moles, or gophers.

4 (5) Persons and businesses licensed or certified by the Department of Pesticide
5 Regulation pursuant to Chapter 4 (commencing with Section 11701) and Chapter
6 8 (commencing with Section 12201) of Division 6 of, and Chapter 3.6,
7 (commencing with Section 14151) of Division 7 of, the Food and Agricultural
8 Code, when trapping rats, mice, voles, moles, or gophers.

9 (6) Persons trapping mammals in accordance with **Section 4152 or 4180**, except
10 when providing trapping services for profit.

11 **Comment.** Subdivisions (a) and (b)(1) of Section 8200 restate the first sentence of former Fish
12 and Game Code Section 4005(a) without substantive change.

13 Subdivision (b)(2)-(5) continues former Fish and Game Code Section 4005(e) without change,
14 except as indicated below:

15 The following nonsubstantive changes are made:

- 16 • An additional paragraph designation is added to former Fish and Game Code Section
17 4005(e)(1).
- 18 • Two commas are added for clarity.
- 19 • The words “when acting” are added for clarity.

20 Subdivision (b)(6) continues former Fish and Game Code Section 4005(c) without change,
21 except as indicated below:

22 The following nonsubstantive changes are made:

- 23 • The provision incorporates the text introducing the other exceptions to the relevant
24 license requirement contained in former Fish and Game Code Section 4005(e).
- 25 • Cross-references to former Fish and Game Code Sections 4152 and 4180 are updated.
- 26 • The words “are not required to procure a trapping license” are replaced with a comma.

27 **Staff Notes.** (1) Proposed Sections 8200(a) and 8200(b)(1) are intended to restate the first
28 sentence of existing Fish and Game Code Section 4005(a) to improve its clarity, without
29 changing its substantive effect. The existing provision reads as follows:

30 “Except as otherwise provided in this section, every person, other than a fur dealer, who traps
31 fur-bearing mammals or nongame mammals, designated by the commission or who sells raw furs
32 of those mammals, shall procure a trapping license.”

33 **The staff invites comment on whether the restatement would cause any substantive
34 change in the meaning of the provision.**

35 (2) **The staff invites comment on the meaning of “designated by the commission” in
36 Section 4005(a).**

37 (3) The definition of “raw fur” in Section 4005(a) is continued by proposed Section 273.

38 **§ 8202. Sale of raw fur**

39 8202. No raw furs taken by persons providing trapping services for profit may
40 be sold.

41 **Comment.** Section 8202 continues former Fish and Game Code Section 4005(d) without
42 change.

43 **Staff Note.** Although Section 4005(d) could be read as applying broadly to *all* persons
44 providing trapping services for profit, the provision is oddly placed (in the middle of Section
45 4005) if that is its intended effect. Instead, it may be that the provision is intended to apply only

1 to persons providing trapping services for profit *that are described in existing Section 4005(c)*,
2 the paragraph immediately preceding Section 4005(d).

3 **The staff invites comment on this issue.**

4 **§ 8205. Standards for license**

5 8205. The department shall develop standards that are necessary to ensure the
6 competence and proficiency of applicants for a trapping license. No person shall
7 be issued a trapping license until passing a test of knowledge and skill in trapping.

8 **Comment.** Section 8205 continues former Fish and Game Code Section 4005(b) without
9 change, except as indicated below:

10 The following nonsubstantive changes are made:

- 11 • The word “license” is replaced with “trapping license.”
- 12 • The words “until he or she has passed a test of his or her knowledge and skill in this
13 field” are replaced with “until passing a test of knowledge and skill in trapping.”

14 **§ 8210. Fee for license**

15 8210. (a) The fee for a trapping license is as follows:

16 (1) For a resident of this state 16 years of age or older, a base fee of forty-five
17 dollars (\$45), adjusted under Section 2780.

18 (2) For a resident of this state under the age of 16 years, a base fee of fifteen
19 dollars (\$15), adjusted under Section 2780.

20 (3) For a nonresident of this state, a base fee of two hundred twenty-five dollars
21 (\$225), adjusted under Section 2780.

22 (b) The commission shall adjust the amount of the fees specified in subdivision
23 (a) as necessary to fully recover, but not exceed, all reasonable administrative and
24 implementation costs of the department and the commission relating to those
25 licenses.

26 **Comment.** Subdivision (a) of Section 8210 continues former Fish and Game Code Section
27 4006(a) without change, except as indicated below:

28 The following nonsubstantive changes are made:

- 29 • The words “A trapping license shall be issued” are replaced with “The fee for a
30 trapping license is.”
- 31 • The words “To any” are replaced with “For a.”
- 32 • The words “over the age of 16 years” are replaced with “16 years of age or older” to
33 clarify the application of the provision to persons that have achieved their sixteenth
34 birthday. See also Section 6255 (stating hunting license fee for resident of state “16
35 years of age or older.”
- 36 • The words “upon payment of” are replaced with a comma.
- 37 • The words “person not a resident” are replaced with “nonresident.”
- 38 • A cross-reference to former Fish and Game Code Section 713 is updated.

39 Subdivision (b) continues former Fish and Game Code Section 4006(c) without change, except
40 as indicated below:

41 The following nonsubstantive changes are made:

- 42 • Two commas are deleted for clarity.

43 **§ 8215. Authorization and term**

44 8215. A trapping license authorizes the licensee to do both of the following:

1 (a) Take fur-bearing mammals and nongame mammals during the open season
2 for those mammals, for a term of one year beginning on July 1, or if the license is
3 issued after the beginning of a term, for the remainder of that term.

4 (b) Sell the raw fur of any animal taken pursuant to subdivision (a).

5 **Comment.** Section 8215 restates former Fish and Game Code Section 4007 without
6 substantive change.

7 **Staff Notes.** (1) Proposed Section 8215 is intended to restate existing Fish and Game Code
8 Section 4007 to improve its clarity, without changing its substantive effect. The existing
9 provision reads as follows:

10 “4007. A trapping license authorizes the person to whom it is issued to take, during the open
11 season, fur-bearing mammals and nongame mammals for a term of one year from July 1st, or if
12 issued after the beginning of such term, for the remainder thereof and to sell the raw fur of any
13 such animal.”

14 **The staff invites comment on whether the restatement would cause any substantive
15 change in the meaning of the provision.**

16 (2) Section 4007 provides that a trapping license authorizes both specified take of specified
17 animals during a specified term, and the sale of raw fur from the animals taken. However, the
18 phrasing of the provision makes it unclear whether the sale of raw fur may also only occur during
19 the specified term.

20 **The staff invites comment on whether, under Section 4007, a trapper may sell raw fur
21 from an animal taken pursuant to a trapping license at any time, or only during the period
22 in which the trapping license is valid.**

23 **§ 8220. Statement of prior year’s take**

24 8220. No trapping license shall be issued to any applicant within one year
25 following the expiration of any trapping license previously issued to the applicant,
26 unless the applicant has submitted to the department a sworn statement showing
27 the number of each kind of fur-bearing mammal and nongame mammal taken
28 under the previous license, and the names and addresses of any persons to whom
29 the mammals were shipped or sold.

30 **Comment.** Section 8220 continues former Fish and Game Code Section 4008 without change,
31 except as indicated below:

32 The following nonsubstantive changes are made:

- 33 • The word “such” is replaced with “the.”
- 34 • The word “he” is replaced with “the applicant.”
- 35 • The word “mammals” is singularized.
- 36 • The words “the persons to whom they were shipped” are replaced with “any persons to
37 whom the mammals were shipped.”

38 **§ 8225. Issuance to nonresident**

39 8225. (a) A trapping license may be issued to a nonresident only if the state in
40 which the nonresident resides provides for issuance of a nonresident trapping
41 license to California residents.

42 (b) A nonresident issued a license under subdivision (a) may take only those
43 species, and may take or possess only that quantity of a species, that a resident of

1 California may take or possess under a nonresident trapping license or permit in
2 the state of residence of that nonresident.

3 **Comment.** Section 8225 continues former Fish and Game Code Section 4006(b) without
4 change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • Subdivision designations are added.
- 7 • The words “A license shall not be issued to a nonresident if the state in which he or she
8 resides does not provide” are replaced with “A trapping license may be issued to a
9 nonresident only if the state in which the nonresident resides provides.”
- 10 • The word “Also” is deleted as superfluous.
- 11 • The words “this subdivision” are replaced with “subdivision (a).”

12 **§ 8230. Commission regulations**

13 8230. The commission may adopt regulations that it determines to be necessary
14 to regulate the taking and sale of fur-bearing mammals or nongame mammals
15 taken under a trapping license.

16 **Comment.** Section 8230 continues former Fish and Game Code Section 4009.5 without
17 change, except as indicated below:

18 The following nonsubstantive change is made:

- 19 • The words “such regulations as it determines” are replaced with “regulations that it
20 determines.”

21 **§ 8235. Violation by licensee**

22 8235. (a) Any person licensed or required to be licensed pursuant to Section
23 8200 who is convicted of a violation of any provision of **Article 1 (commencing**
24 **with Section 4000) of Chapter 2 of Part 3 of Division 4** or of **Section 4150** is
25 prohibited from taking any fur-bearing or nongame mammal in the state for three
26 years from the date of the next regularly scheduled meeting of the commission
27 held at least 30 days after the date of that conviction.

28 (b) The commission shall revoke any trapping license issued to a person
29 prohibited from taking fur-bearing and nongame mammals in the state pursuant to
30 subdivision (a), for the period of prohibition.

31 (c) No person prohibited from taking fur-bearing and nongame mammals in the
32 state shall obtain, or attempt to obtain, a trapping license during a period of
33 prohibition.

34 **Comment.** Section 8235 restates former Fish and Game Code Section 12156 without
35 substantive change.

36 **Staff Notes.** (1) Proposed Section 8235 is intended to restate existing Fish and Game Code
37 Section 12156 to improve its clarity, without changing its substantive effect. The existing
38 provision reads as follows:

39 “12156. No person who is licensed or required to be licensed pursuant to Section 4005 and
40 who is convicted of a violation of any provision of Article 1 (commencing with Section 4000) of
41 Chapter 2 of Part 3 of Division 4 or of Section 4150 shall take any fur-bearing or nongame
42 mammal in the state for three years from the date of the next regularly scheduled meeting of the
43 commission held at least 30 days after the date of that conviction. The commission shall revoke

1 the trapping license of the person who is prohibited from taking fur-bearing and nongame
2 mammals in the state, if the person has one, for the period of prohibition.

3 No person shall obtain, or attempt to obtain, a trapping license during a period of prohibition.”

4 **The staff invites comment on whether the restatement would cause any substantive**
5 **change in the meaning of the provision.**

6 (2) It is unclear whether the “period of prohibition” referenced in the second paragraph of
7 Section 12156 is intended to be the period of prohibition specified in the first part of the section,
8 or is intended to be *any* “period of prohibition” provided for in the Fish and Game Code. See,
9 e.g., Sections 12150 (prohibition against any taking for five years based on intentional or
10 negligent killing or wounding of human being while hunting), 12151 (same for intentional or
11 negligent killing or wounding of domestic while hunting).

12 The use of an indefinite article in referring to the period of prohibition (“a period of
13 prohibition”), contrasted with the use of a definite article in the sentence immediately preceding
14 (“the period of prohibition”), adds to that ambiguity.

15 **The staff invites comment on the application of the second paragraph of Section 12156.**

16 CHAPTER 2. FUR DEALER LICENSE

17 **§ 8300. Required license**

18 8300. (a) Any person that buys, sells, trades, or deals in the raw fur of a fur-
19 bearing mammal or a nongame mammal is a fur dealer and is required to obtain a
20 fur dealer license.

21 (b) No fur dealer license shall be required of a licensed trapper selling raw furs
22 that were lawfully taken, or a domesticated game breeder selling raw furs of
23 animals that the breeder has raised.

24 **Comment.** Section 8300 restates former Fish and Game Code Section 4030 without
25 substantive change.

26 **☞ Staff Note.** Proposed Section 8300 is intended to restate existing Fish and Game Code
27 Section 4030 to improve its clarity, without changing its substantive effect. The existing
28 provision reads as follows:

29 “4030. Every person engaging in, carrying on, or conducting wholly or in part the business of
30 buying, selling, trading or dealing in raw furs of fur-bearing mammals or nongame mammals is a
31 fur dealer and shall procure a fur dealer license. No fur dealer license shall be required of a
32 licensed trapper selling raw furs which he has lawfully taken, or a domesticated game breeder
33 selling raw furs of animals which he has raised.”

34 **The staff invites comment on whether the restatement would cause any substantive**
35 **change in the meaning of the provision.**

36 **§ 8305. Fee for license**

37 8305. The fee for a fur dealer license is a base fee of seventy dollars (\$70),
38 adjusted under Section 2780.

39 **Comment.** Section 8305 restates former Fish and Game Code Section 4031 without
40 substantive change.

41 **☞ Staff Notes.** (1) Proposed Section 8305 is intended to restate existing Fish and Game Code
42 Section 4031 to improve its clarity, without changing its substantive effect. The existing
43 provision reads as follows:

1 “4031. A revocable fur dealer license shall be issued to any person upon payment of a base fee
2 of seventy dollars (\$70), as adjusted under Section 713.”

3 **The staff invites comment on whether the restatement would cause any substantive**
4 **change in the meaning of the provision.**

5 (2) Section 4031 specifies a fee for a “revocable” fur dealer license. As there appears to be no
6 other provision in the existing code specifying a fee for a *nonrevocable* fur dealer license, this
7 language appears intended as a shorthand manner of both specifying the fee for *any* fur dealer
8 license, and further providing that fur dealer licensees are revocable.

9 Based on that construction, proposed Section 8305 would delete the “revocable” reference in
10 Section 4031 as superfluous. The revocability of a fur dealer license is addressed in more detail in
11 existing Section 4043 (which would be continued by proposed Section 8235), which appears to
12 be the only provision in the existing Fish and Game Code or implementing regulations addressing
13 the revocability of a fur dealer license.

14 **The staff invites comment on whether the deletion of the word “revocable” from existing**
15 **Section 4031 would cause any substantive change in the meaning of the provision.**

16 **§ 8310. Authorization and term**

17 8310. A fur dealer license authorizes the licensee to buy, sell, trade, or deal in
18 raw fur of fur-bearing mammals and nongame mammals for a term of one year
19 beginning on July 1, or if the license is issued after the beginning of the term, for
20 the remainder of the term.

21 **Comment.** Section 8310 restates former Fish and Game Code Section 4034 without
22 substantive change.

23 **Staff Notes.** (1) Proposed Section 8310 is intended to restate existing Fish and Game Code
24 Section 4034 to improve its clarity, without changing its substantive effect. The existing
25 provision reads as follows:

26 “4034. A fur dealer license authorizes the person to whom it is issued to buy, sell, barter,
27 exchange, or possess raw furs or parts thereof of fur-bearing mammals and nongame mammals
28 for a term of one year from July 1st, or if issued after the beginning of such term, for the
29 remainder thereof.”

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

32 (2) Proposed Section 8310 would conform the conduct authorized by a fur dealer license to the
33 conduct that is unlawful if a person acts without such a license. Compare existing Fish and Game
34 Code Sections 4030 and 4034.

35 **The staff invites comment on whether that harmonizing change would cause any**
36 **problems.**

37 **§ 8315. Fur agent license**

38 8315. (a) Any person who is employed by a licensed fur dealer to engage in the
39 business of buying, selling, trading, or dealing in raw furs only on behalf of the fur
40 dealer, and not on the person’s own behalf, is a fur agent.

41 (b) Except as otherwise provided in this code, it is unlawful to act as a fur agent
42 without a fur agent license.

43 (c) The fee for a fur agent license is a base fee of thirty-five dollars (\$35),
44 adjusted under Section 2780.

45 **Comment.** Subdivisions (a) and (b) of Section 8315 continues former Fish and Game Code
46 Section 4032 without change, except as indicated below:

1 The following nonsubstantive changes are made:

- 2 • Subdivision designations are added.
- 3 • Two commas are added for clarity.
- 4 • The words “his own behalf” are replaced with “the person’s own behalf.”
- 5 • The words “and shall procure a fur agent license” are replaced with “Except as
- 6 otherwise provided in this code, it is unlawful to act as a fur agent without a fur agent
- 7 license.”
- 8 • A cross-reference to former Fish and Game Code Section 713 is updated.

9 Subdivision (c) restates former Fish and Game Code Section 4033 without substantive change.

10 **☞ Staff Notes.** (1) Subdivision (c) of proposed Section 8315 is intended to restate existing Fish
11 and Game Code Section 4033 to improve its clarity, without changing its substantive effect. The
12 existing provision reads as follows:

13 “4033. A revocable fur agent license shall be issued to any person who is employed by a
14 licensed fur dealer upon payment of a base fee of thirty-five dollars (\$35), as adjusted under
15 Section 713.”

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

18 (2) Section 4033 specifies a fee for a “revocable” fur agent license. As there appears to be no
19 other provision in the existing code specifying a fee for a *nonrevocable* fur agent license, this
20 language appears intended as a shorthand manner of both specifying the fee for *any* fur agent
21 license, and further providing that fur agent licensees are revocable.

22 Based on that construction, proposed Section 8315 would delete the “revocable” reference in
23 Section 4033 as superfluous. The revocability of a fur agent license is addressed in more detail in
24 existing Section 4043 (which would be continued by proposed Section 8235), which appears to
25 be the only provision in the existing Fish and Game Code or implementing regulations addressing
26 the revocability of a fur agent license.

27 **The staff invites comment on whether the deletion of the word “revocable” from existing
28 Section 4033 would cause any substantive change in the meaning of the provision.**

29 **§ 8320. Display of license**

30 8320. A fur dealer license or fur agent license shall be shown upon request to
31 any person authorized to enforce the provisions of this code.

32 **Comment.** Section 8320 continues former Fish and Game Code Section 4035 without change,
33 except as indicated below:

34 The following nonsubstantive change is made:

- 35 • The words “fur dealer or fur agent license” are replaced with “fur dealer license or fur
36 agent license.”

37 **§ 8325. Record of transfers**

38 8325. (a) A fur dealer licensed pursuant to this chapter shall maintain a true and
39 legible record of any transfer of raw furs that includes:

- 40 (1) The license number, name, and address of any seller.
- 41 (2) The signature, name, and license number, if applicable, of any buyer.
- 42 (3) The number and species of raw furs transferred, by county of take.
- 43 (4) The price paid or terms of exchange.
- 44 (5) The date of transfer.
- 45 (6) Any other information that the department requires.

1 (b) The record of all transfers of raw fur shall be available for inspection at any
2 time by the department.

3 **Comment.** Subdivision (a) of Section 8325 continues former Fish and Game Code Section
4 4037 without change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • The word “Every” is replaced with “A.”
- 7 • The word “article” is replaced with “chapter.”
- 8 • The words “to show” are replaced with “that includes.”
- 9 • The word “the” is replaced with “any.”
- 10 • The word “such” is replaced with “Any.”

11 Subdivision (b) continues former Fish and Game Code Section 4038 without change, except as
12 indicated below:

13 The following nonsubstantive change is made:

- 14 • The words “sale, exchange, barter, or gift” are replaced with “all transfers of raw fur.”

15 **Staff Note.** Although existing Fish and Game Code Section 4038 provides that “the record of
16 “sale, exchange, barter, or gift” shall be available to the department for inspection, the record
17 referenced in Section 4038 appears to be the record of “transfers of raw furs” required by existing
18 Section 4037. Proposed Section 8325(b), which continues existing Section 4038, therefore
19 substitutes a reference to a “record of all transfers of raw fur” for the existing reference to “the
20 record of “sale, exchange, barter, or gift.”

21 **The staff invites comment on whether this substitution may be made in proposed Section**
22 **8325(b) without substantively changing the meaning of existing Section 4038.**

23 **§ 8330. Annual report**

24 8330. (a) A fur dealer licensed pursuant to this chapter shall submit an annual
25 report to the department on all transfers of raw furs, on forms furnished by the
26 department.

27 (b) A fur dealer license shall not be renewed until the report required by
28 subdivision (a) is received.

29 **Comment.** Section 8330 continues former Fish and Game Code Section 4040 without change,
30 except as indicated below:

31 The following nonsubstantive changes are made:

- 32 • Subdivision designations are added.
- 33 • The words “Each licensed fur dealer” are replaced with “A fur dealer licensed pursuant
34 to this chapter.”
- 35 • The words “sale, exchange, barter, or gift” are replaced with “all transfers.”
- 36 • The words “No license shall be renewed until such a report is received” are replaced
37 with “A fur dealer license shall not be renewed until the report required by subdivision
38 (a) is received.”

39 **Staff Note.** Existing Fish and Game Code Section 4040 requires fur dealers to submit an
40 annual report to the department on “the sale, exchange, barter, or gift” of raw furs. However,
41 existing Section 4037 (which would be continued by proposed Section 8325(a)) refers to these
42 processes more generally as “transfers.”

43 **The staff invites comment on whether the term “transfer” may be appropriately**
44 **substituted for the words “sale, exchange, barter, or gift” in proposed Section 8330.**

1 **§ 8335. Confidentiality of documents**

2 8335. The receipts, records, and reports required by this chapter, and the
3 information contained in those documents, shall be confidential, and the records
4 shall not be public records. Any publication of information in the documents shall
5 preserve the confidentiality of the persons involved.

6 **Comment.** Section 8335 continues former Fish and Game Code Section 4041 without change,
7 except as indicated below:

8 The following nonsubstantive changes are made:

- 9 • The word “article” is replaced with “chapter.”
- 10 • The word “therein” is replaced with “in those documents.”
- 11 • The words “Any information which is published shall be published in such a manner as
12 to preserve confidentiality of the persons involved” are replaced with “Any publication
13 of information in the documents shall preserve the confidentiality of the persons
14 involved.”

15 **§ 8340. Regulation**

16 8340. The commission may regulate the buying, selling, trading, or dealing in
17 raw fur or part of raw fur of any fur-bearing mammal or nongame mammal under
18 a fur dealer license.

19 **Comment.** Section 8340 continues former Fish and Game Code Section 4042 without change,
20 except as indicated below:

21 The following nonsubstantive change is made:

- 22 • The words “raw furs, or parts thereof, of all fur-bearing mammals or nongame
23 mammals” are replaced with “raw fur or part of raw fur of any fur-bearing mammal or
24 nongame mammal.”

25 **§ 8350. Purchase of raw fur from unlicensed person**

26 8350. It shall be unlawful for any fur dealer to purchase the raw fur of any fur-
27 bearing mammal or nongame mammal from any person who does not hold a valid
28 trapping license, fur dealer license, or fur agent license.

29 **Comment.** Section 8350 continues former Fish and Game Code Section 4036 without change.

30  **Staff Note.** Does the prohibition in existing Fish and Game Code Section 4036 also apply to a
31 fur agent?

32 **The staff invites comment on whether proposed Section 8350 should state that**
33 **applicability.**

34 **§ 8355. Revocation of license**

35 8355. Any license issued under this chapter may be revoked by the commission
36 at one of the commission’s regularly scheduled meetings, upon the licensee’s
37 conviction of a violation of this chapter.

38 **Comment.** Section 8355 continues former Fish and Game Code Section 4043 without change,
39 except as indicated below:

40 The following nonsubstantive change is made:

- 41 • The word “article” is replaced with “chapter.”

42

Article 1. Use of Dogs to Take Mammals

§ 9100. Definitions

9100. For the purposes of this chapter:

(a) "Pursue" means pursue, run, or chase.

(b) "Bear" means any black bear (*Ursus americanus*) found in the wild in this state.

Comment. Section 9100 merges and restates former Fish and Game Code Sections 3032(a)(1), 3960(a), 3960.2(a), 3960.4(a), and 3960.6(a) without substantive change.

Staff Notes. (1) Proposed Section 9100 is intended to merge and restate existing Fish and Game Code Sections 3032(a)(1), 3960(a), 3960.2(a), 3960.4(a), and 3960.6(a) to improve the clarity of those provisions, without changing their substantive effect. The existing provisions read as follows:

"3960. (a) As used in this section:

(1) "Pursue" means pursue, run, or chase.

(2) "Bear" means any black bear (*Ursus americanus*) found in the wild in this state."

3960.2. (a) As used in this section, the terms "bear" and "pursue" have the same meanings as defined in Section 3960."

3960.4. (a) As used in this section, the terms "bear" and "pursue" have the same meanings as defined in Section 3960."

3960.6. (a) As used in this section, the terms "bear" and "pursue" have the same meanings as defined in Section 3960."

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

(2) In the existing Fish and Game Code, the two definitions in proposed Section 9100 are limited in their applicability to the sections in this proposed title. Nevertheless, that limitation may either have been unintentional, or has been overlooked in the enactment of other provisions making use of either of the two terms.

The staff invites comment on whether either of the definitions in proposed Section 9100 should be generalized to apply to the entire code, and relocated in the proposed law among other code-wide definitions.

§ 9105. Hound tag program

9105. (a) As used in this section, "hound" means a dog used to pursue mammals.

(b) The commission may establish a hound tag program.

(c) If a hound tag program is established, the commission may require all of the following:

(1) That each hound be issued a license tag bearing a unique identifying number that is to be worn at all times by the hound while pursuing mammals.

(2) That all relevant local and state laws pertaining to dogs are being followed while the hound is being used to pursue mammals.

(3) That each hound be microchipped with an implanted transponder that has a unique identification code.

(4) That the owner maintain documentation showing that the hound is current on all required vaccinations and treatments for the prevention of rabies and any other disease specified by the department.

1 (5) That the owner report, within 24 hours of its last sighting, any hound that is
2 lost during hunting, pursuing, or tracking activities.

3 (6) That the hound's tag identification number be recorded on the hunting tag of
4 any animal taken using the services of the hound.

5 (d) If a hound tag program is established, the commission may adjust the amount
6 of the fees for the hound tag as necessary, to fully recover, but not exceed, all
7 reasonable administrative and implementation costs of the department and the
8 commission relating to the program.

9 **Comment.** Section 9105 continues former Fish and Game Code Section 3032(a)(2)-(d) without
10 change.

11 **§ 9110. Use of dog to pursue specified mammals**

12 9110. (a) It is unlawful to permit or allow any dog to pursue any of the
13 following mammals, under the specified conditions:

14 (1) A big game mammal, during the closed season for that mammal.

15 (2) A fully protected, rare, or endangered mammal, at any time.

16 (3) A bear or bobcat, at any time.

17 (4) A mammal in a game refuge or ecological reserve, if hunting within that
18 refuge or ecological reserve is unlawful.

19 (b) This section does not apply to the use of dogs to pursue bears or bobcats by
20 federal, state, or local law enforcement officers, or their agents or employees,
21 while carrying out official duties as required by law.

22 **Comment.** Subdivision (a) of Section 9110 continues former Fish and Game Code Section
23 3960(b) without change, except as indicated below:

24 The following nonsubstantive changes are made:

- 25 • Paragraph designations are added.
- 26 • The words "of the following mammals, under the specified conditions:" are added.
- 27 • The words "closed season on that mammal" are replaced with "closed season for that
28 mammal."

29 Subdivision (b) continues former Fish and Game Code Section 3960(c)(3) without change,
30 except as indicated below:

31 The following nonsubstantive change is made:

- 32 • The word "when" is replaced with "while."

33 **Staff Notes.** (1) Existing Fish and Game Code Section 3960(b) declares it unlawful to either
34 "permit" or "allow" a dog to engage in the conduct described in the provision.

35 **The staff invites comment on whether one of these two terms, which in this context**
36 **appear to be synonymous, can be deleted without substantively changing the meaning of the**
37 **provision.**

38 (2) The existing Fish and Game Code contains no definition of the term "big game mammal,"
39 which appears in Section 3960(b) as well as several other sections of the code. See existing
40 Sections 3004.5(j)(2), 3214, 3960.

41 The term "big game" is also used in several sections of the existing code, without definition.
42 See existing Sections 3953, 12013.3, and 12013.5. However, one code section, Section
43 3004.5(a)(1), refers to the term "as defined in the department's mammal hunting regulations."

44 Those regulations provide that "'Big game' means the following: deer (genus *Odocoileus*), elk
45 (genus *Cervus*), pronghorn antelope (genus *Antilocarpa*), wild pig (feral pigs, European wild pigs

1 and their hybrids (genus *Sus*), black bear (genus *Ursus*) and Nelson bighorn sheep (subspecies
2 *Ovis canadensis nelsoni*) in the areas described in subsection 4902(b) of the Fish and Game
3 Code.” 14 CCR § 350.

4 **The staff invites comment on whether a definition of the term “big game mammal”**
5 **should be added to the proposed law. Such a definition could either reiterate the existing**
6 **regulation’s substantive content or could instead incorporate the regulation by reference**
7 **(which would preserve the possibility of the department revising the content if necessary).**

8 Article 2. Seizure or Dispatch of Dogs Threatening Wildlife

9 **§ 9115. Capture or dispatch of dog by department**

10 9115. (a) The department may take any of the following actions:

11 (1) Capture any dog not under the reasonable control of its owner or handler,
12 when that uncontrolled dog is pursuing, in violation of Section 9110, any of the
13 following mammals:

14 (A) A big game mammal.

15 (B) A bear or bobcat.

16 (C) A fully protected, rare, or endangered mammal.

17 (2) Capture or dispatch any dog inflicting injury or immediately threatening to
18 inflict injury to any of the following mammals, under the specified conditions:

19 (A) A big game mammal, during the closed season on that mammal.

20 (B) A bear or bobcat, at any time.

21 (C) A fully protected, rare, or endangered mammal, at any time.

22 (D) A mammal in a game refuge or ecological reserve, if hunting within that
23 refuge or ecological reserve is unlawful.

24 (b) No criminal or civil liability shall accrue to any department employee as a
25 result of enforcement of this section.

26 (c) If a dog captured or dispatched pursuant to this section has identification, its
27 owner shall be notified by the department within 72 hours after the capture or
28 dispatch.

29 **Comment.** Section 9115 continues former Fish and Game Code Section 3960(c)(1), (2), and
30 (4) without substantive change.

31 **Staff Notes.** (1) Proposed Section 9115 is intended to restate existing Fish and Game Code
32 Section 3960(c)(1), (2), and (4) to improve the clarity of those provisions, without changing their
33 substantive effect. The existing provisions read as follows:

34 “(c)(1) The department may take any of the following actions:

35 (A) Capture any dog not under the reasonable control of its owner or handler, when that
36 uncontrolled dog is pursuing, in violation of this section, any big game mammal, any bear or
37 bobcat, or any fully protected, rare, or endangered mammal.

38 (B) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to
39 any big game mammal during the closed season on that mammal, and the department may capture
40 or dispatch any dog inflicting injury or immediately threatening to inflict injury on any bear or
41 bobcat at any time, or any fully protected, rare, or endangered mammal at any time.

42 (C) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to
43 any mammal in a game refuge or ecological reserve if hunting within that refuge or ecological
44 reserve is unlawful.

1 (2) No criminal or civil liability shall accrue to any department employee as a result of
2 enforcement of this section.

3

4 (4) Owners of dogs with identification, that have been captured or dispatched, shall be notified
5 within 72 hours after capture or dispatch.”

6 **The staff invites comment on whether the restatement would cause any substantive**
7 **change in the meaning of the provision.**

8 (2) Existing Fish and Game Section 3960(b) (which would be continued by proposed Section
9 9115(a)) prohibits permitting or allowing a dog to pursue four described categories of mammals
10 under specified conditions:

11 (a) A big game mammal, during the closed season for that mammal,

12 (b) A fully protected, rare, or endangered mammal, at any time,

13 (c) A bear or bobcat, at any time, or

14 (d) A mammal in a game refuge or ecological reserve, if hunting within that refuge or
15 ecological reserve is unlawful.

16 Existing Section 3960(c)(1)(A) (which would be continued by proposed Section 9115(b)(1))
17 authorizes the Department of Fish and Wildlife to capture any uncontrolled dog that is *pursuing* a
18 mammal listed in the first three categories above, but not the fourth (mammals in game refuges
19 and ecological preserves where hunting is not permitted).

20 **Should the fourth category be included?**

21 **§ 9120. Seizure or dispatch of dog by property owner or agent**

22 9120. (a) Whenever an employee of the department is not present to carry out
23 the provisions of Section 9115 with respect to any dog inflicting injury or
24 immediately threatening to inflict injury to any deer, elk, or prong-horned antelope
25 during the closed season for those mammals, any property owner, lessee, person
26 holding a permit for the purpose of grazing livestock, or that person’s employee,
27 may seize or dispatch the dog, if the dog is found on that person’s land or premises
28 without the permission of the person who is in immediate possession of the land.

29 (b) Notwithstanding subdivision (a), if a dog described in subdivision (a) bears
30 any readily visible identification tag or license tag required by Section 30951 of
31 the Food and Agricultural Code, the dog may be dispatched under this section only
32 if the dog has, and its owner has been notified that the dog has, previously
33 threatened any of these species.

34 (c) No action, civil or criminal, shall be maintained based on a dog lawfully
35 seized or dispatched pursuant to Section 9115 or this section.

36 (d) If a dog seized or dispatched under this section bears the identification tag or
37 license tag required by Section 30951 of the Food and Agricultural Code, its
38 owner shall be notified within 72 hours of the seizure or dispatch.

39 **Comment.** Section 9120 restates former Fish and Game Code Section 3961 without
40 substantive change.

41 **Staff Notes.** (1) Proposed Section 9120 is intended to restate existing Fish and Game Code
42 Section 3961 to improve its clarity, without changing its substantive effect. The existing section
43 read as follows:

44 “3961. Whenever an employee of the department is not present to carry out the provisions of
45 Section 3960 with respect to any dog inflicting injury or immediately threatening to inflict injury
46 to any deer, elk, or prong-horned antelope during the closed season for these mammals, any

1 property owner, lessee, person holding a permit for the purpose of grazing livestock, or his or her
2 employee, may seize or dispatch the dog if it is found on his or her land or premises without the
3 permission of the person who is in immediate possession of the land. If the dog has on it any
4 readily visible identification tag or license tag as prescribed by Section 30951 of the Food and
5 Agricultural Code, and the dog is found in the act of immediately threatening to injure deer, elk,
6 or prong-horned antelope, the dog may only be dispatched under this section if the dog has, and
7 the owner has been notified that the dog has, previously threatened any of these species.

8 No action, civil or criminal, shall be maintained for a dog lawfully seized or dispatched
9 pursuant to this article.

10 The owner of a dog shall be notified within 72 hours of the seizure or dispatching of that dog
11 under this section if it had the identification tag or license tag which is required pursuant to
12 Section 30951 of the Food and Agricultural Code.”

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

15 (2) The second paragraph of existing Fish and Game Section 3961 provides:

16 “No action, civil or criminal, shall be maintained for a dog lawfully seized or dispatched
17 pursuant to this article.”

18 However, the reference to “article” in this provision is a clear error requiring correction, as
19 Section 3961 is not and never has been contained in an article. The section does appear in a
20 *chapter* with another section, referred to in Section 3961, providing for the dispatch of a dog
21 (Section 3960). However, the dispatch provided for in Section 3960 is by the Department, rather
22 than by a private individual.

23 **The staff invites comment on whether the reference to “this article” in existing Section**
24 **3961 should be corrected to refer to “this section,” or to “this chapter.”**

25 CHAPTER 3. DEPREDATOR CONTROL

26 **§ 9200. Department take of depredator**

27 9200. The department may take any mammal that it determines is unduly
28 preying on any bird, mammal, or fish.

29 **Comment.** Section 9200 continues the second sentence of former Fish and Game Code Section
30 4153 without change, except as indicated below:

31 The following nonsubstantive changes are made:

- 32 • The words “which, in its opinion,” are replaced with “that.”
- 33 • The word “upon” is replaced with “on.”

34 **§ 9205. Immature mammals in den**

35 9205. (a) It is unlawful to do either of the following to an immature depredator
36 mammal while it is in its den:

- 37 (1) Use a snare, hook, or barbed wire to remove the mammal.
- 38 (2) Use fire to kill the mammal.

39 (b) Nothing in this section shall prohibit the use of fire-ignited gas cartridges or
40 other products registered or permitted under the Federal Insecticide, Rodenticide,
41 and Fungicide Act (7 U.S.C. 136 et seq.).

42 **Comment.** Subdivision (a) of Section 9205 continues the first sentence of former Fish and
43 Game Code Section 4180.1 without substantive change.

1 Subdivision (b) continues the second sentence of former Fish and Game Code Section 4180.1
2 without substantive change, except as indicated below:

3 The following nonsubstantive change is made:

- 4 • The citation “7 U.S.C. 135” is replaced with “7 U.S.C. 136.”

5 **Staff Notes.** (1) Proposed Section 9205 is intended to restate the first sentence of existing
6 Fish and Game Code Section 4180.1 to improve the clarity of that sentence, without changing its
7 substantive effect. The existing sentence reads as follows:

8 “It is unlawful to use snares, hooks, or barbed wire to remove from the den, or fire to kill in the
9 den, any immature depredator mammal.”

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

12 (2) **The staff invites comment on the meaning of the term “depredator mammal” as used
13 in Section 4180.1.**

14 **§ 9210. Identification of depredator**

15 9210. The department shall tag, brand, or otherwise identify in a persistent and
16 distinctive manner any large depredatory mammal relocated by, or relocated with
17 the approval of, the department for game management purposes.

18 **Comment.** Section 9210 continues former Fish and Game Code Section 4190 without change.

19 **Staff Notes.** (1) Existing Fish and Game Code Section 4190 refers to a “large” depredatory
20 mammal.

21 **The staff invites comment on whether more precise or descriptive language might be
22 substituted for the word “large” to provide better notice of the scope of the section’s
23 prohibition.**

24 (2) **The staff invites comment on the meaning of the term “depredatory mammal” as used
25 in Section 4190.**

26 TITLE 2. GAME MAMMALS

27 CHAPTER 1. GENERAL PROVISIONS

28 **§ 9300. Waste of game mammal**

29 9300. (a) Except as provided in subdivision (b), no person shall through
30 carelessness or neglect allow any game mammal that had been in that person’s
31 possession, or any portion of the game mammal’s flesh that is usually eaten by
32 humans, to be needlessly wasted.

33 (b) The prohibition in subdivision (a) does not apply to game mammals taken
34 pursuant to Section **4152**.

35 **Comment.** Section 9300 restates the second portion of the first sentence of former Fish and
36 Game Code Section 4304 applicable to game mammals, and the second sentence of Section 4304,
37 without substantive change.

38 **Staff Notes.** (1) Proposed Section 9300 is intended to restate the second portion of the first
39 sentence of existing Fish and Game Code Section 4304 applicable to game mammals, and the
40 second sentence of that section, to improve the clarity of those provisions, without changing their
41 substantive effect. The existing provisions read as follows:

1 “4304. [N]or shall any person at any time leave through carelessness or neglect any game
2 mammal ... which is in his possession, or any portion of the flesh thereof usually eaten by
3 humans, to go needlessly to waste. The provisions of this section shall not apply to game
4 mammals taken under the authority of Sections 4152 and 4183 of this code.”

5 **The staff invites comment on whether the restatement would cause any substantive**
6 **change in the meaning of the provision.**

7 (2) Existing Section 4183, which is cross-referenced in existing Section 4304, was repealed in
8 1984. 1984 Cal. Stat. ch. 1365. The repealed section related to taking bears that kill livestock.

9 **The staff invites comment on whether a reference to a different code section should be**
10 **substituted for the reference to Section 4183.**

11 CHAPTER 2. BIG GAME MANAGEMENT ACCOUNT

12 § 9400. Account established

13 9400. (a) The Big Game Management Account is hereby established within the
14 Fish and Game Preservation Fund.

15 (b) All revenues from the sale of antelope, elk, deer, wild pig, bear, and sheep
16 tags, including any fundraising tags, shall be deposited in the Big Game
17 Management Account to permit separate accountability for the receipt and
18 expenditure of these funds.

19 **Comment.** Section 9400 continues former Fish and Game Code Section 3953(a)-(b) without
20 change.

21 § 9405. Use of funds

22 9405. (a) Funds deposited in the Big Game Management Account shall be
23 available for expenditure upon appropriation by the Legislature to the department.
24 These funds shall be expended solely for the purposes set forth in this chapter,
25 **Sections 3951 and 3952, Chapter 5 (commencing with Section 450) of Division**
26 **1, Chapter 7 (commencing with Section 4650), and Chapter 11 (commencing**
27 **with Section 4900)**, including acquiring land, completing projects, and
28 implementing programs to benefit antelope, elk, deer, wild pigs, bear, and sheep,
29 and expanding public hunting opportunities and related public outreach.

30 (b) Any land acquired with funds from the Big Game Management Account
31 shall be acquired in fee title or protected with a conservation easement and, to the
32 extent possible, be open or provide access to the public for antelope, elk, deer,
33 wild pig, bear, or sheep hunting.

34 (c) The department may also use funds from the Big Game Management
35 Account to pay for administrative and enforcement costs of the programs and
36 activities described in this section. The amount allocated from the account for
37 administrative costs shall be limited to the reasonable costs associated with
38 administration of the programs and activities described in this section.

39 **Comment.** Section 9405 continues former Fish and Game Code Section 3953(c) without
40 change, except as indicated below:

41 The following nonsubstantive changes are made:

- 1 • Subdivision designations are added.
- 2 • Cross-references to former Fish and Game Code Sections 3951-3953, Chapter 5
- 3 (commencing with Section 450) of Division 1 of the former Fish and Game Code,
- 4 Chapter 7 (commencing with Section 4650) of Part 3 of Division 4 the former Fish and
- 5 Game Code, and Chapter 11 (commencing with Section 4900) of Part 3 of Division 4
- 6 of the former Fish and Game Code, are updated.
- 7 • The word “and” is deleted as superfluous.

8 **§ 9410. Non-profit organizations**

9 9410. The department may make grants to, reimburse, or enter into contracts or
10 other agreements as defined in **subdivision (a) of Section 1571** with nonprofit
11 organizations, for the use of the funds from the Big Game Management Account
12 to carry out the purposes of this section, including related habitat conservation
13 projects.

14 **Comment.** Section 9410 continues former Fish and Game Code Section 3953(d) without
15 change, except as indicated below:

16 The following nonsubstantive changes are made:

- 17 • A cross-reference to former Fish and Game Code Section 1571(a) is updated.
- 18 • A comma is relocated for clarity.

19 **§ 9415. Advisory committee**

20 9415. An advisory committee, as determined by the department, that includes
21 interested nonprofit organizations that have goals and objectives directly related to
22 the management and conservation of big game species and primarily represent the
23 interests of persons licensed pursuant to **Section 3031**, shall review and provide
24 comments to the department on all proposed projects funded from the Big Game
25 Management Account, to help ensure that the requirements of this chapter have
26 been met.

27 **Comment.** Section 9415 continues the first sentence of former Fish and Game Code Section
28 3953(e) without change, except as indicated below:

29 The following nonsubstantive changes are made:

- 30 • Cross-references to former Fish and Game Code Sections 3031 and 3953 are updated.
- 31 • Two commas are added for clarity.

32 **§ 9420. Online information**

33 9420. The department shall post, on an Internet website, budget information and
34 a brief description for all projects funded from the Big Game Management
35 Account.

36 **Comment.** Section 9420 continues the second sentence of former Fish and Game Code Section
37 3953(e) without change, except as indicated below:

38 The following nonsubstantive change is made:

- 39 • The words “post budget information and a brief description on an Internet Web site”
40 are replaced with “post, on an Internet website, budget information and a brief
41 description.”

- A comma is added for clarity.

§ 9505. Tag required

9505. (a) It is unlawful to take any bear with a firearm, trap, or bow and arrow, without first procuring a tag authorizing the taking of that bear in accordance with this chapter.

(b) In addition to any other penalty or fine imposed pursuant to this code, if a person is convicted of a violation of this section and was previously convicted of one or more violations of **Section 3007, 3700, 4330, 4750**, or of selling or purchasing parts of a bear in violation of **Section 4758**, separate from the offense before the court, the court may order as a condition of probation that the person attend the hunter education course designated in **Section 3051** 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. Section 9505 continues former Fish and Game Code Section 4750 without change, except as indicated below:

The following nonsubstantive changes are made:

- The word “firearm” is replaced with “a firearm.”
- A comma is added for clarity.
- The words “but no iron or steel-jawed or any type of metal-jawed trap shall be used to take any bear” is deleted as superfluous. See Section 9500.

Subdivision (b) restates the part of former Fish and Game Code Section 12001.5 applicable to former Fish and Game Code Section 4750 without substantive change.

Staff Note. Subdivision (b) of proposed Section 9505 is intended to restate the part of former Fish and Game Code Section 12001.5 applicable to former Fish and Game Code Section 4750 to improve the clarity of that language, without changing its substantive effect. Existing Section 12001.5 reads as follows:

“12001.5. (a) 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 a section listed in subdivision (b) 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 a section listed in subdivision (b), that the person attend the hunter education course designated in Section 3051 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.

(b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and 4750, and a sale or purchase of parts of a bear in Section 4758.”

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

1 § 9560. Use of tag

2 9560. (a) The person to whom a bear tag has been issued shall carry the tag
3 while hunting bear. Upon the killing of any bear, that person shall immediately fill
4 out the tag completely, legibly, and permanently, and cut out or punch out and
5 completely remove notches or punch holes for the month and the date of the kill.
6 One part of the tag shall be immediately attached to the ear of the bear and kept
7 attached during the open season and for 15 days thereafter. The holder of the bear
8 tag shall immediately, upon harvesting a bear, notify the department in a manner
9 specified by the commission.

10 (b) Except as otherwise provided by this code or regulations adopted pursuant to
11 this code, it is unlawful to possess any untagged bear.

12 **Comment.** Section 9560 continues former Fish and Game Code Section 4753 without change,
13 except as indicated below:

14 The following nonsubstantive change is made:

- 15 • Subdivision designations are added.

16 **Staff Note.** The staff invites comment on whether a more common term could be substituted
17 for the word “harvesting” as used in existing Fish and Game Code Section 4753.

18 § 9570. Countersigning

19 9570. Any person legally killing a bear in this state shall have the tag for that
20 bear countersigned by a commissioner, a person employed by the department, a
21 person designated for that purpose by the commission, a notary public, a
22 postmaster, a peace officer, or an officer authorized to administer oaths, before
23 transporting the bear, except to transport the bear to the nearest person authorized
24 by this section to countersign the tag on the route from where the bear is taken to
25 that person.

26 **Comment.** Section 9570 restates former Fish and Game Code Section 4755 without
27 substantive change.

28 **Staff Note.** Proposed Section 9570 is intended to restate existing Fish and Game Code
29 Section 4755 to improve its clarity, without changing its substantive effect. The existing
30 provisions read as follows:

31 “4755. Any person legally killing a bear in this state shall have the tag countersigned by a fish
32 and game commissioner, a person employed in the department, a person designated for this
33 purpose by the commission, or by a notary public, postmaster, postmistress, peace officer or by
34 an officer authorized to administer oaths, before transporting that bear except for the purpose of
35 taking it to the nearest officer authorized to countersign the tag, on the route being followed from
36 the point where the bear is taken.”

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

39 § 9600. Retention of skin and head

40 9600. Any person taking a bear must retain possession of the skin of the bear,
41 and the portion of the bear’s head that includes both ears, during the open season
42 for that bear and for 15 days thereafter, and must produce the skin and that portion

1 of the head upon the demand of any officer authorized to enforce the provisions of
2 this code.

3 **Comment.** Section 9600 restates former Fish and Game Code Section 4757 without
4 substantive change.

5 **Staff Note.** Proposed Section 9600 is intended to restate existing Fish and Game Code
6 Section 4757 to improve its clarity, without changing its substantive effect. The existing
7 provisions read as follows:

8 “4757. Any person taking any bear must retain in his possession during the open season
9 thereon, and for 15 days thereafter, the skin and portion of the head bearing the ears, and must
10 produce the skin and portion of the head upon the demand of any officer authorized to enforce the
11 provisions of this code.”

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

14 **§ 9630. Killing bear held in captivity**

15 9630. (a) Except as authorized under a domesticated game breeder’s license, a
16 bear kept in captivity may be killed only with the approval of the department, and
17 under regulations adopted by the commission.

18 (b) The carcass of a bear described in subdivision (a) may not be sold, and shall
19 be disposed of as directed by the department.

20 **Comment.** Section 9630 continues the part of former Fish and Game Code Section 3006
21 applicable to bears without change, except as indicated below:

22 The following nonsubstantive changes are made:

- 23 • The word “any” is replaced with “a.”
- 24 • The words “such regulations as the commission may prescribe” are replaced with
25 “regulations adopted by the commission.”
- 26 • A reference to a “part” of a bear is deleted as superfluous. See Section 95 (reference to
27 animal generally includes part of animal).
- 28 • The words “of any such mammal” are replaced with “of a bear described in subdivision
29 (a).”
- 30 • The words “in such manner as the department may direct” are replaced with “as
31 directed by the department.”

32 **Staff Note.** Existing Fish and Game Code Section 3006 mandates special statutory protection
33 for deer, elk, or bears that have been kept in captivity:

34 “Except as authorized under a domesticated game breeder’s license, any deer, elk, or bear kept
35 in captivity may be killed only with the approval of the department, and under such regulations as
36 the commission may prescribe. The carcass, or any part thereof, of any such mammal may not be
37 sold, and shall be disposed of in such manner as the department may direct.”

38 Proposed Section 9630 would continue Section 3006, to the extent it applies to bears.

39 The meaning of the reference in the second sentence of Section 3006 (which would be
40 continued by proposed Section 9630(b)) to “any such mammal” is not clear. The object of that
41 reference (and scope of the prohibition in the second sentence of Section 3006) could be
42 understood as (a) any mammal listed in the first sentence of Section 3006; (b) any mammal listed
43 in the first sentence of Section 3006 that had been kept in captivity (and died from natural
44 causes), or (c) any mammal listed in the first sentence of Section 3006 that had been kept in
45 captivity, and that was thereafter killed with department approval.

Article 3. Tags

§ 9635. Fee

9635. (a) Any person 12 years of age or over who possesses a valid hunting license may obtain the number of bear tags corresponding to the number of bears that may legally be taken by one person during the current license year, upon payment of a fee as follows:

(1) For a resident of this state, a base fee of fifteen dollars (\$15) for each bear tag, adjusted under Section 2780.

(2) For a nonresident of this state, a base fee of one hundred five dollars (\$105) for each bear tag, adjusted under Section 2780.

(b) Fee revenue generated pursuant to subdivision (a) shall be deposited in the Big Game Management Account established in Section 9400.

Comment. Section 9635 restates former Fish and Game Code Section 4751 without substantive change.

Staff Note. Proposed Section 9635 is intended to restate existing Fish and Game Code Section 4751 to improve its clarity, without changing its substantive effect. The existing provisions read as follows:

“4751. (a) Any resident of this state, 12 years of age or over, who possesses a valid hunting license, may procure the number of bear tags corresponding to the number of bear that may legally be taken by one person during the current license year, upon payment of a base fee of fifteen dollars (\$15), as adjusted under Section 713, for each bear tag. Fee revenues pursuant to this subdivision shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.

(b) Any nonresident of this state, 12 years of age or over, who possesses a valid California hunting license, may procure the number of bear tags corresponding to the number of bear that may be legally taken by one person during the current license year upon payment of the base fee of one hundred five dollars (\$105), as adjusted under Section 713, for each bear tag. Fee revenues pursuant to this subdivision shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.”

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

§ 9640. Time period when tags are valid

9640. Bear tags are valid only during that portion of the current hunting license year in which a bear may be taken or possessed in any district.

Comment. Section 9640 continues former Fish and Game Code Section 4752 without change, except as indicated below:

The following nonsubstantive change is made:

- The word “bear “ is replaced with “a bear.”

§ 9645. Forfeiture of tags

9645. (a) Any person who is convicted of a violation of any provision of this code, or of any rule, regulation, or order made or adopted under this code, relating to bears, shall forfeit any bear tags issued to that person, and new bear tags shall

1 not be issued to that person during the then current license year for hunting
2 licenses.

3 (b) A person described in subdivision (a) shall not apply for bear tags for the
4 following license year.

5 **Comment.** Section 9645 continues former Fish and Game Code Section 4754 without change,
6 except as indicated below:

7 The following nonsubstantive changes are made:

- 8 • A comma is added for clarity.
- 9 • The words “his or her bear tags” are replaced with “any bear tags issued to that
10 person.”

11 Article 4. Population Management

12 § 9650. Seasons

13 9650. (a) When adopting regulations pursuant to any authority otherwise vested
14 in the commission by this code, the commission shall annually determine whether
15 to continue, repeal, or amend regulations establishing hunting seasons for black
16 bears. The determination shall include a review of factors that impact the health
17 and viability of the black bear population.

18 (b) Prior to adopting a regulation authorizing a special hunting season for black
19 bears for the purpose of curtailing property damage in any specified area, the
20 commission shall comply with **Article 2 (commencing with Section 325) of**
21 **Chapter 3 of Division 1.**

22 **Comment.** Subdivision (a) of Section 9650 continues former Fish and Game Code Section 302
23 without change, except as indicated below:

24 The following nonsubstantive change is made:

- 25 • The word “which” is replaced with “that.”

26 Subdivision (b) continues former Fish and Game Code Section 303 without change, except as
27 indicated below:

28 The following nonsubstantive change is made:

- 29 • A cross-reference to Article 2 (commencing with Section 325) of Chapter 3 of Division
30 1 of the former Fish and Game Code is updated.

31 Article 5. Use of Parts

32 § 9655. Personal use of bear parts

33 9655. (a) The skin, hide, teeth, claws, or other parts of any bear lawfully taken
34 and possessed for the period provided in Section 9600 may be tanned or otherwise
35 used for personal use only.

36 (b) Notwithstanding the provisions of Section 9600, the skin, hide, teeth, claws,
37 or other parts of any bear lawfully taken may be donated at any time to a veterans’
38 organization or veterans’ service committee for use by veterans for rehabilitation
39 purposes. If the donation occurs during the retention period specified in Section

1 9600, the donor shall obtain a receipt and retain it for the donation for the duration
2 of that period.

3 **Comment.** Subdivision (a) of Section 9655 continues the first sentence of former Fish and
4 Game Code Section 4759 without change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • A cross-reference to Section 4757 is updated.
- 7 • The word “utilized” is replaced with “otherwise used.”

8 Section (b) restates the second and third sentences of former Fish and Game Code Section
9 4759 without substantive change.

10 **Staff Note.** Subdivision (b) of proposed Section 9655 is intended to restate the second and
11 third sentences of existing Fish and Game Code Section 4759 to improve its clarity, without
12 changing its substantive effect. The existing provisions read as follows:

13 “Notwithstanding the provisions of Section 4757, the skin, hide, teeth, claws, or other parts of
14 any bear lawfully taken may be donated any time to veterans’ organizations or veterans’ service
15 committees for use by veterans for rehabilitation purposes. The donor shall obtain a receipt which
16 shall be retained during the period stipulated by Section 4757.”

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

19 **§ 9660. Commercial use of bear parts**

20 9660. (a) Subject to the provisions of this code permitting the sale of
21 domestically raised game mammals, it is unlawful to sell or purchase, or possess
22 for sale, the meat, skin, hide, teeth, claws, or other parts of any bear in this state.

23 (b) For the purposes of subdivision (a), possession of more than one bear gall
24 bladder is prima facie evidence that the bear gall bladders are possessed for sale.

25 (c) Nothing in this section prohibits a sale authorized pursuant to **Section 3087**.

26 **Comment.** Section 9660 continue former Fish and Game Code Section 4758 without change,
27 except as indicated below:

28 The following nonsubstantive changes are made:

- 29 • Subdivision designations are added.
- 30 • The word “The” is replaced with “For the purposes of subdivision (a).”
- 31 • A comma is added for clarity.
- 32 • A cross-reference to Section 3087 is updated.

33 **§ 9665. Punishment for commercial use of bear parts**

34 9665. (a) Notwithstanding **subdivision (a) of Section 3300**, and except as
35 otherwise provided in subdivision (c), the punishment for each violation of Section
36 9660 shall include both of the following:

37 (1) A fine of two hundred fifty dollars (\$250) for each bear part. As used in this
38 paragraph, “bear part” means an individual part or group of like parts of any bear
39 that the defendant knowingly and unlawfully sells, purchases, or possesses for
40 sale. For the purposes of this paragraph, claws, paws, or teeth from a single bear
41 that are knowingly purchased, sold, or possessed for sale with the intent that they
42 be delivered to a single end user shall be considered a single part.

1 (2) An additional fine of not more than five thousand dollars (\$5,000),
2 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in
3 a county jail for not more than one year, or both that fine and imprisonment.

4 (b) If a conviction for violation of Section 9660 is based on the possession of
5 two bear gallbladders, and probation is granted or the execution or imposition of
6 sentence is suspended, it shall be a condition of that probation or suspended
7 sentence that a minimum term of 30 days be served in a county jail.

8 (c) A conviction for violation of Section 9660 based on possession of three or
9 more bear gallbladders is subject to all of the following:

10 (1) The punishment for the offense shall include both of the following:

11 (A) The fine specified in paragraph (1) of subdivision (a).

12 (B) An additional fine of not more than ten thousand dollars (\$10,000),
13 imprisonment in a county jail for not more than one year, or both that fine and
14 imprisonment.

15 (2) If probation is granted or the execution or imposition of sentence is
16 suspended, it shall be a condition of that probation or suspended sentence that a
17 minimum term of three months be served in a county jail.

18 (d) Consecutive sentences shall be imposed for separate violations of Section
19 9660.

20 **Comment.** Section 9665 continues former Fish and Game Code Section 12005 without
21 change, except as indicated below:

22 The following nonsubstantive changes are made:

- 23 • Cross-references to former Fish and Game Code Section 3300(a) and 4758 are updated.
- 24 • Two commas are deleted for clarity.
- 25 • The words “If the conviction is for “ are replaced with “If a conviction for violation of
26 this section is based on.”
- 27 • A comma is added for clarity.
- 28 • The words “if” and “shall” are deleted as superfluous.
- 29 • A comma is deleted as superfluous.
- 30 • The word “thereof” is replaced with “of that probation or suspended sentence.”
- 31 • The words “(1) The possession of three or more bear gallbladders is punishable by both
32 of the following:” is replaced with “A conviction for violation of this section based on
33 possession of three or more bear gallbladders is subject to all of the following: (1) The
34 punishment for the offense shall include both of the following:.”

35 **§ 9668. Punishment for sale or purchase if prior conviction**

36 9668. In addition to any other penalty or fine imposed pursuant to this code, if a
37 person is convicted of selling or purchasing parts of a bear in violation of **Section**
38 **4758**, and was previously convicted of one or more violations of **Section 3007,**
39 **3700, 4330, 4750**, or of selling or purchasing parts of a bear in violation of
40 **Section 4758**, separate from the offense before the court, the court may order as a
41 condition of probation that the person attend the hunter education course
42 designated in **Section 3051** and perform community service, preferably relating to
43 natural resources if that type of community service is available, as follows:

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

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

3 **Comment.** Section 9668 restates the part of former Fish and Game Code Section 12001.5
4 applicable to former Fish and Game Code Section 4758 without substantive change.

5 **Staff Note.** Proposed Section 9668 is intended to restate the part of former Fish and Game
6 Code Section 12001.5 applicable to former Fish and Game Code Section 4758 to improve the
7 clarity of that language, without changing its substantive effect. Existing Section 12001.5 reads as
8 follows:

9 “12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person
10 has been convicted of one or more offenses that was a violation of a section listed in subdivision
11 (b) separate from the offense before the court, the court may order as a condition of probation
12 upon conviction of the offense before the court that is also a violation of a section listed in
13 subdivision (b), that the person attend the hunter education course designated in Section 3051 and
14 perform community service, preferably relating to natural resources if that type of community
15 service is available, as follows:

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

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

19 (b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and
20 4750, and a sale or purchase of parts of a bear in Section 4758.”

21 **The staff invites comment on whether the restatement would cause any substantive**
22 **change in the meaning of the provision.**

23 **§ 9670. Use of signal-emitting device**

24 9670. (a) In addition to any other penalties provided in this code, any person
25 convicted of violating this code or any regulation adopted pursuant to this code
26 while using a signal-emitting device in conjunction with the take of bear for the
27 purpose of selling or trafficking in bear parts shall be subject to a fine of ten
28 thousand dollars (\$10,000) per bear part. For purposes of this section, a “signal-
29 emitting device” means any device capable of generating radio, cellular, satellite,
30 or other signal transmission for purposes of providing communication or location
31 information.

32 (b) All revenue from fines imposed pursuant to this section shall be deposited in
33 the Big Game Management Account established in Section 9400 and shall be used
34 for the big game management purposes described in that section.

35 (c) Moneys equivalent to 50 percent of the revenue from any fine collected
36 pursuant to this section shall be paid to the county in which the offense was
37 committed, pursuant to **Section 13003**. The county board of supervisors shall first
38 use revenues pursuant to this subdivision to reimburse the costs incurred by the
39 district attorney or city attorney in investigating and prosecuting the violation. Any
40 excess revenues may be expended in accordance with **Section 13103**.

41 **Comment.** Section 9670 continues former Fish and Game Code Section 12013.5 without
42 change, except as indicated below:

43 The following nonsubstantive changes are made:

- 44 • The words “pursuant thereto” are replaced with “pursuant to this code.”
- 45 • Cross-references to Sections 3953 and 13003 are updated.

1 **Staff Note.** Under existing Fish and Game Code Section 12013.5, a person who violates any
2 code provision relating to the take of bear may face significant additional monetary penalties if
3 specified conditions are satisfied. The staff finds the triggering conditions to be somewhat
4 ambiguous. For example, is it sufficient that a person be carrying a cell phone to trigger the
5 additional penalties, or must the signal-emitting device be used in some material way as part of
6 the violation?

7 Moreover, the section provides for a separate \$10,000 penalty “per bear part,” but there is no
8 rule for identifying what constitutes a distinct bear “part.” Compare existing Section 4758
9 (proposed Section 9660), which references specific parts of a bear. Further, what happens if a
10 defendant is proven to have satisfied all the triggering requirements of Section 12013.5 (including
11 having taken a bear for the purpose of selling or trafficking in bear parts), but has not yet divided
12 the bear into parts at the time of arrest – is that defendant subject to any penalty?

13 **The staff invites comment on how this section is intended to be applied, and whether it**
14 **could be usefully clarified.**

15 **The staff invites comment on the intended scope of the prohibition in the second sentence**
16 **of existing Section 3006.**

17 Article 6. Take to Protect Property

18 § 9675. Take to protect property

19 9675. The following provisions do not apply to the taking of bear that is
20 authorized to protect livestock, land, or property from damage or threatened
21 damage from bear:

22 (a) **Section 4750.**

23 (a) **Section 4751.**

24 (a) **Section 4752.**

25 (a) **Section 4753.**

26 (a) **Section 4754.**

27 (a) **Section 4755.**

28 (a) **Section 4757.**

29 (a) **Section 4758.**

30 (a) **Section 4759.**

31 (a) **Section 4760.**

32 (a) **Section 4763.**

33 **Comment.** Section 9675 continues former Fish and Game Code Section 4763 without change,
34 except as indicated below:

35 The following nonsubstantive change is made:

- 36 • The sections that continue the provisions in the chapter of the former Fish and Game
37 Code in which Section 4763 appeared are individually listed.

38 § 9680. Protection of livestock or crops

39 9680. (a) As used in this section, the terms “bear” and “pursue” have the same
40 meanings as defined in Section 9100.

41 (b) Notwithstanding Section 9110, dogs that are guarding or protecting livestock
42 or crops on property owned, leased, or rented by the owner of the dogs may be

1 used to pursue a bear, if the dogs are maintained with, and remain in reasonable
2 proximity to, the livestock or crops being guarded or protected.

3 **Comment.** Section 9680 continues the part of former Fish and Game Code Section 3960.6
4 applicable to bears without change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • Cross-references to Section 3960 are updated.
- 7 • The phrase “the pursuit of bears or bobcats by dogs that are guarding or protecting
8 livestock or crops on property owned, leased, or rented by the owner of the dogs, is not
9 prohibited” are replaced with “dogs that are guarding or protecting livestock or crops
10 on property owned, leased, or rented by the owner of the dogs may be used to pursue a
11 bear.”

12 **§ 9685. Bear killing livestock**

13 9685. (a) A bear encountered in the act of inflicting injury to, molesting, or
14 killing, livestock may be taken immediately by the owner of the livestock or the
15 owner’s employee, subject to subdivision (e) and the following requirements:

16 (1) The taking shall be reported to the department no later than the next working
17 day.

18 (2) The carcass of any bear taken is made available to the department.

19 (b) The department shall make a record of each report made pursuant to
20 subdivision (a), and may have an employee of the department investigate the
21 taking, or cause the taking to be investigated. Upon completion of an
22 investigation, the investigator may, upon a finding that the requirements of this
23 section have been met with respect to a bear taken under subdivision (a), issue a
24 written statement to the person taking the bear, confirming that the requirements
25 of this section have been met.

26 (c) Notwithstanding **Section 4763**, any part of a bear lawfully possessed
27 pursuant to this section is subject to **Section 4758**.

28 (d) Nothing in this section prohibits a federal, state, or county trapper from
29 killing or trapping a bear that is killing or molesting livestock.

30 **Comment.** Section 9685 continues the part of former Fish and Game Code Section 4181.1
31 applicable to bear without change, except as indicated below:

32 The following nonsubstantive changes are made:

- 33 • A subdivision designation is added.
- 34 • The words “Any bear that is encountered while” is replaced with “A bear
35 encountered.”
- 36 • The words “if the” are replaced with “, subject to subdivision (e) and the following
37 requirements:.”
- 38 • The words “is reported no later than the next working day to the department” is
39 replaced with “shall be reported to the department no later than the next working day.”
- 40 • The words “of any bear taken” are added for clarity.
- 41 • Two commas are added for clarity.
- 42 • The words “the investigation” are replaced with “an investigation.”
- 43 • The words “the particular bear” are replaced with “a bear.”
- 44 • The words “taking the bear” are added for clarity.
- 45 • Cross-references to former Fish and Game Code Sections 4758 and 4763 are updated.
- 46 • The word “any” is replaced with “a.”

- 1 • The words “trappers” and “traps” are singularized.
- 2 • The words “bears when the bears are” are replaced with “a bear that is.”
- 3 • The words “, but no iron-jawed or steel-jawed or any type of metal-jawed trap shall be
- 4 used to take the bear, and no person, including employees of the state, federal, or
- 5 county government, shall take bear with iron-jawed, steel-jawed, or any type of metal-
- 6 jawed traps” are deleted as superfluous.

7 **§ 9690. Use of dogs**

8 9690. (a) As used in this section, the terms “bear” and “pursue” have the same
9 meanings as defined in Section 9100.

10 (b) Notwithstanding Section 9110, not more than three dogs may be used to
11 pursue a bear pursuant to a depredation permit issued by the department, if all of
12 the following conditions are met:

13 (1) The applicant demonstrates, in writing, that nonlethal and avoidance
14 measures were undertaken prior to requesting the depredation permit.

15 (2) The applicant demonstrates, in writing, the specific need for the use of dogs
16 in carrying out the depredation permit.

17 (3) The depredation permit authorizing the use of dogs is valid for the take of
18 one bear.

19 (4) The depredation permit authorizing the use of dogs is valid for a period not
20 to exceed 20 consecutive days.

21 (5) The depredation permit specifies the name and address of any dog handler
22 who will be utilized in the pursuit or taking.

23 (6) The dog handler has the depredation permit in his or her possession at all
24 times during the pursuit or taking.

25 (7) The dog handler does not pursue a bear more than one mile off the property
26 on which the depredation activity occurred.

27 (c) After any taking of a bear, the applicant is required to submit the skull to the
28 department as described in the department’s Black Bear Management Plan. No
29 part of any bear taken pursuant to a depredation permit may be sold, purchased, or
30 possessed for sale, as described in **Section 4758**.

31 (d) No holder of a depredation permit may solicit or receive compensation from
32 any person in exchange for carrying out the terms of the permit. For the purpose of
33 this subdivision, “compensation” means remuneration paid in money, property, or
34 anything else of value.

35 (e) The holder of a depredation permit, within 30 days of its issuance, shall
36 report to the department detailing the use of the permit and the results of any
37 pursuits, including information about bear pursued and whether the bear was or
38 was not harmed, but not killed.

39 **Comment.** Section 9690 continues the part of former Fish and Game Code Section 3960.2
40 applicable to bears without change, except as indicated below:

41 The following nonsubstantive changes are made:

- 42 • Cross-references to former Fish and Game Code Sections 3960 and 4758 are updated.
- 43 • The words “For these purposes” are replaced with “For the purpose of this
- 44 subdivision.”

1 **Staff Note.** Existing Fish and Game Code Section 3690.2 and a number of other existing code
2 sections refer to the issuance by the department of a “depredation permit.” However, there appear
3 to be no sections in the existing code that either authorize the Department to issue such permits,
4 or specify any process relating to the issuance of such permit.

5 **The staff invites comment on whether a provision should be added to the proposed law**
6 **providing general authorization for the issuance of such permits.**

7 **§ 9692. Depredation permit**

8 9692. (a) Except as provided in Section **4181.1**, an owner or tenant of land or
9 property that is being damaged or destroyed, or is in danger of being damaged or
10 destroyed, by bear, may apply to the department for a permit to kill the bear
11 causing or threatening the damage or destruction.

12 (b) Subject to the limitations in subdivisions (g) and (i), the department, upon
13 satisfactory evidence of actual or immediately threatened damage or destruction of
14 land or property, shall issue a revocable permit for the taking and disposition of
15 the responsible bear, under regulations adopted by the commission. The permit
16 shall include a statement of the penalties that may be imposed for a violation of
17 the permit conditions.

18 (c) Bear taken under a permit issued pursuant to subdivision (b) shall not be sold
19 or shipped from the premises on which they are taken, except pursuant to
20 instructions from the department.

21 (d) No iron-jawed, steel-jawed, or any other type of metal-jawed trap shall be
22 used to take any bear pursuant to this section.

23 (e) The permit issued for taking bear pursuant to subdivision (a) shall contain
24 the following facts:

25 (1) Why the issuance of the permit was necessary.

26 (2) What efforts were made to prevent the actual or immediately threatened
27 damage or destruction without killing the bear or bears.

28 (3) What corrective actions should be implemented to prevent reoccurrence of
29 the damage or destruction.

30 (f) It is unlawful for any person to violate the terms of any permit issued
31 pursuant to this section.

32 **Comment.** Section 9692 restates the part of former Fish and Game Code Section 4181
33 applicable to bear without substantive change.

34 **Staff Note.** Proposed Section 9692 is intended to restate the part of existing Fish and Game
35 Code Section 4181 applicable to bear to improve the clarity of that language, without changing its
36 substantive effect. Existing Section 4181 reads as follows:

37 “4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is
38 being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver,
39 wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the
40 animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory
41 evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable
42 permit for the taking and disposition of the animals under regulations adopted by the commission.
43 The permit shall include a statement of the penalties that may be imposed for a violation of the
44 permit conditions. Animals so taken shall not be sold or shipped from the premises on which they
45 are taken except under instructions from the department. No iron-jawed or steel-jawed or any

1 type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any
2 type may be used to take any gray squirrel or wild turkey pursuant to this section. The department
3 shall designate the type of trap to be used to ensure the most humane method is used to trap gray
4 squirrels. The department may require trapped squirrels to be released in parks or other
5 nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under
6 this section.

7 (b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following
8 facts:

9 (1) Why the issuance of the permit was necessary.

10 (2) What efforts were made to solve the problem without killing the bears.

11 (3) What corrective actions should be implemented to prevent reoccurrence.

12 (c) With respect to wild pigs, the department shall provide an applicant for a depredation
13 permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of
14 Section 4181.1 with written information that sets forth available options for wild pig control,
15 including, but not limited to, depredation permits, allowing periodic access to licensed hunters,
16 and holding special hunts authorized pursuant to Section 4188. The department may maintain and
17 make available to these persons lists of licensed hunters interested in wild pig hunting and lists of
18 nonprofit organizations that are available to take possession of depredating wild pig carcasses.

19 (d) With respect to elk, the following procedures shall apply:

20 (1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all
21 of the following:

22 (A) Verify the actual or immediately threatened damage or destruction.

23 (B) Provide a written summary of corrective measures necessary to immediately alleviate the
24 problem.

25 (C) Determine the viability of the local herd, and determine the minimum population level
26 needed to maintain the herd.

27 (D) Ensure the permit will not reduce the local herd below the minimum.

28 (E) Work with affected landowners to develop measures to achieve long-term resolution, while
29 maintaining viability of the herd.

30 (2) After completing the statewide elk management plan pursuant to Section 3952, the
31 department shall use the information and methods contained in the plan to meet the requirements
32 of subparagraphs (C), (D), and (E) of paragraph (1).”

33 **The staff invites comment on whether the restatement would cause any substantive change**
34 **in the meaning of the provision.**

35 Article 7. Take for Scientific Purposes

36 § 9695. Scientific research

37 9695. (a) As used in this section, the terms “bear” and “pursue” have the same
38 meanings as defined in Section 9100.

39 (b) Notwithstanding Section 9110, the department may authorize qualified
40 individuals, educational institutions, governmental agencies, or nongovernmental
41 organizations to use dogs to pursue bears for the purpose of scientific research,
42 provided that the research project is designed to do all of the following:

43 (1) Contribute to knowledge of natural wildlife ecosystems.

44 (2) Follow best practices and minimize disruptions in the lives and movements
45 of bears and other wildlife, as well as impacts to the habitat while maintaining the
46 applicant’s objectives.

1 (3) Directly or indirectly support the sustainability and survival of bear
2 populations and healthy ecosystems.

3 (4) Exclude the intentional injury or killing of any bear.

4 (5) Exclude the intentional relocation of any bear other than to areas suitable to
5 them in the state. Any relocation shall comply with the requirements of **Section**
6 **4190**.

7 (c) Any research project authorized pursuant to subdivision (b) shall be
8 undertaken pursuant to a memorandum of understanding between the department
9 and the authorized research entity that addresses all of the following:

10 (1) Trapping and anesthetizing of the animals pursued, collection of diagnostic
11 samples, attaching or surgically implanting monitoring or recognition devices or
12 markings, and providing veterinary care or euthanasia, as required, for the health,
13 safety, and humane treatment of the animals.

14 (2) Qualifications of onsite field supervisors necessary for carrying out
15 authorized research procedures.

16 (3) Immediate reporting of any incidental mortality or injury to a bear as a result
17 of authorized research activities. Reports of any incidental mortality or injury to a
18 bear shall be made available to the public upon request.

19 (4) Filing of annual and final progress reports of research involving pursuit by
20 dogs. Annual and final progress reports shall be made available to the public upon
21 request.

22 (d) The department shall provide notice to the public of any bear research
23 project authorized pursuant to subdivision (b) at least 30 days prior to its initiation,
24 and, upon request, shall make available to the public copies of the memorandum
25 of understanding between the department and the authorized research entity
26 required pursuant to subdivision (c).

27 **Comment.** Section 9695 continues the part of former Fish and Game Code Section 3960.4
28 applicable to bears without change, except as indicated below:

29 The following nonsubstantive changes are made:

- 30 • Cross-references to former Fish and Game Code Sections 3960 and 4190 are updated.
- 31 • The words “Not include” are replaced with “Exclude.”

32 **Staff Note.** Existing Fish and Game Code Section 3960.4 authorizes the Department to use
33 dogs to pursue bears *or* bobcats for scientific research, provided the research project meets certain
34 conditions. Among those conditions are safeguards that generally protect against harm to any
35 “bear *or* bobcat.” See Section 3960.4(b)(3), (4), (5) (which would be continued by proposed
36 Section 9520(b)(3), (4), (5)).

37 Proposed Section 9695 would continue the provisions of Section 3960.4 that relate only to the
38 pursuit and protection of bears, and all references to bobcats have therefore been deleted from the
39 proposed section. (The provisions of Section 3960.4 that relate to the pursuit and protection of
40 bobcats are continued elsewhere.)

41 **The staff invites comment on whether any of the deletions of the references to bobcats in**
42 **this section would cause any substantive change in the meaning of any provision in Section**
43 **3960.4.**

Article 8. Miscellaneous Provisions

§ 9698. Bears within San Bernardino and Riverside counties

9698. In any district or part of a district located within either San Bernardino or Riverside counties, a bear may be taken at any time with traps, if all of the following conditions are satisfied:

(a) The traps are set inside a good and substantial fence, as defined by Section 17121 of the Food and Agricultural Code.

(b) The fence surrounds one or more beehives.

(c) No part of the fence is at a distance greater than 50 yards from a beehive.

(d) A conspicuous sign is posted and maintained at each entrance to the enclosed premises, warning of the presence of the traps.

(e) No iron-jawed, steel-jawed, or any other type of metal-jawed trap is used.

Comment. Section 9698 continues former Fish and Game Code Section 4185 without change, except as indicated below:

The following nonsubstantive changes are made:

- The word “located” is added for clarity.
- The word “and” is replaced with “or.”
- The word “Counties” is replaced with “counties.”
- The word “bears” is replaced with “a bear.”
- The word “within” is replaced with “, if all of the following conditions are satisfied: (a) The traps are set inside....”
- The words “such fence is described in” are replaced with “defined by.”
- The words “, surrounding beehives, if no” are replaced with “The fence surrounds one or more beehives. (c) No....”
- The word “if” is deleted as superfluous.
- The words “premises to give warning” are replaced with “premises, warning.”
- The words “No iron or steel-jawed or any type of metal-jawed trap shall be used to take bear under this section” are replaced with “No iron-jawed, steel-jawed, or any other type of metal-jawed trap is used.”

CHAPTER 4. DEER

Article 1. Take Generally

§ 9700. Required tag or permit

9700. (a) It is unlawful to take a deer without first obtaining a deer tag or permit authorizing the taking of that deer.

(b) In addition to any other penalty or fine imposed pursuant to this code, if a person is convicted of a violation of this section, and was previously convicted of one or more violations of **Section 3007, 3700, 4330, 4750**, or of selling or purchasing parts of a bear in violation of **Section 4758**, separate from the offense before the court, the court may order as a condition of probation that the person attend the hunter education course designated in **Section 3051** and perform community service, preferably relating to natural resources if that type of community service is available, as follows:

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

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

5 **Comment.** Subdivision (a) of Section 9700 continues former Fish and Game Code Section
6 4330 without change, except as indicated below:

7 The following nonsubstantive changes are made:

- 8 • The word “any” is replaced with “a.”
- 9 • The word “procuring” is replaced with “obtaining.”

10 Subdivision (b) restates the part of former Fish and Game Code Section 12001.5 applicable to
11 former Fish and Game Code Section 4330 without substantive change.

12 **Staff Note.** Proposed Section 9700 is intended to restate the part of former Fish and Game
13 Code Section 12001.5 applicable to former Fish and Game Code Section 4330 to improve the
14 clarity of that language, without changing its substantive effect. Existing Section 12001.5 reads as
15 follows:

16 “12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person
17 has been convicted of one or more offenses that was a violation of a section listed in subdivision
18 (b) separate from the offense before the court, the court may order as a condition of probation
19 upon conviction of the offense before the court that is also a violation of a section listed in
20 subdivision (b), that the person attend the hunter education course designated in Section 3051 and
21 perform community service, preferably relating to natural resources if that type of community
22 service is available, as follows:

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

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

26 (b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and
27 4750, and a sale or purchase of parts of a bear in Section 4758.”

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

30 **§ 9705. Tagging of deer**

31 9705. (a) A person issued a deer tag shall carry the tag while hunting deer.

32 (b) A person that kills a deer shall immediately fill out a deer tag issued to that
33 person completely, legibly, and permanently, and cut out or punch out and
34 completely remove notches or punch holes for the month and date of the kill. The
35 deer tag shall then be immediately attached to the antlers of antlered deer or to the
36 ear of any other deer, and shall be kept attached during the open season and for 15
37 days thereafter.

38 (c) A person that harvests a deer shall immediately notify the department of the
39 harvesting, in a manner specified by the commission.

40 (d) Except as otherwise provided by this code or regulation adopted pursuant to
41 this code, it is unlawful to possess any untagged deer.

42 **Comment.** Section 9705 continues former Fish and Game Code Section 4336 without change,
43 except as indicated below:

44 The following nonsubstantive changes are made:

- 45 • Subdivision designations are added.

- 1 • The words “The person to whom a deer tag has been issued” are replaced with “A
- 2 person issued a deer tag.”
- 3 • The words “Upon the killing of any” are replaced with “A person that kills a.”
- 4 • The words “, that person” are deleted as superfluous.
- 5 • The words “the tag” are replaced with “a deer tag issued to that person.”
- 6 • The words “then,” “shall be,” and “of the harvesting” are added for clarity.
- 7 • The words “The holder of the deer tag shall immediately, upon harvesting a deer,” are
- 8 replaced with “A person that harvests a deer shall immediately.”

9 **☞ Staff Note.** The staff invites comment on whether a more common term could be substituted
10 for the word “harvesting” as used in existing Fish and Game Code Section 4336.

11 § 9710. Countersigning

12 9710. Any person legally killing a deer in this state shall have the tag for that
13 deer countersigned by a person employed by the department, a person designated
14 for that purpose by the commission, a notary public, a postmaster, a peace officer,
15 or an officer authorized to administer oaths, before transporting the deer, except to
16 transport the deer to the nearest person authorized to countersign the tag, on the
17 route from where the deer is taken to that person.

18 **Comment.** Section 9710 restates former Fish and Game Code Section 4341 without
19 substantive change.

20 **☞ Staff Note.** Proposed Section 9710 is intended to restate existing Fish and Game Code
21 Section 4341 to improve its clarity, without changing its substantive effect. The existing
22 provisions read as follows:

23 “4341. Any person legally killing a deer in this state shall have the tag countersigned by a
24 person employed in the department, a person designated for this purpose by the commission, or
25 by a notary public, postmaster, postmistress, peace officer, or an officer authorized to administer
26 oaths, before transporting such deer, except for the purpose of taking it to the nearest person
27 authorized to countersign the tag, on the route being followed from the point where the deer is
28 taken.”

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

31 § 9715. Retention of deer head

32 9715. Any person taking a deer must retain possession of that portion of the
33 deer’s head that in adult males normally bears the antlers, during the open season
34 for that deer and for 15 days thereafter, and must produce that portion of the head
35 upon the demand of any officer authorized to enforce the provisions of this code.

36 **Comment.** Section 9715 restates former Fish and Game Code Section 4302 without
37 substantive change.

38 **☞ Staff Note.** Proposed Section 9715 is intended to restate existing Fish and Game Code
39 Section 4302 to improve the clarity of that provision, without changing its substantive effect. The
40 existing provision reads as follows:

41 “Any person taking any deer shall retain in his possession during the open season thereon, and
42 for 15 days thereafter, that portion of the head which in adult males normally bears the antlers,
43 and shall produce the designated portion of the head upon the demand of any officer authorized to
44 enforce the provisions of this code.”

1 **The staff invites comment on whether the restatement would cause any substantive**
2 **change in the meaning of either section.**

3 **§ 9720. Killing deer held in captivity**

4 9720. (a) Except as authorized under a domesticated game breeder’s license, a
5 deer kept in captivity may be killed only with the approval of the department, and
6 under regulations adopted by the commission.

7 (b) The carcass of a deer described in subdivision (a) may not be sold, and shall
8 be disposed of as directed by the department.

9 **Comment.** Section 9720 continues the part of former Fish and Game Code Section 3006
10 applicable to deer without change, except as indicated below:

11 The following nonsubstantive changes are made:

- 12 • The word “any” is replaced with “a.”
- 13 • The words “such regulations as the commission may prescribe” are replaced with
14 “regulations adopted by the commission.”
- 15 • A reference to a “part” of a deer is deleted as superfluous. See Section 95 (reference to
16 animal generally includes part of animal).
- 17 • The words “of any such mammal” are replaced with “of a deer described in subdivision
18 (a).”
- 19 • The words “in such manner as the department may direct” are replaced with “as
20 directed by the department.”

21  **Staff Note.** Existing Fish and Game Code Section 3006 mandates special statutory protection
22 for deer, elk, or bears that have been kept in captivity:

23 “Except as authorized under a domesticated game breeder’s license, any deer, elk, or bear kept
24 in captivity may be killed only with the approval of the department, and under such regulations as
25 the commission may prescribe. The carcass, or any part thereof, of any such mammal may not be
26 sold, and shall be disposed of in such manner as the department may direct.”

27 Proposed Section 9720 would continue Section 3006, to the extent it applies to deer.

28 The meaning of the reference in the second sentence of Section 3006 (which would be
29 continued by proposed Section 9715(b)) to “any such mammal” is not clear. The object of that
30 reference (and scope of the prohibition in the second sentence of Section 3006) could be
31 understood as (a) any mammal listed in the first sentence of Section 3006; (b) any mammal listed
32 in the first sentence of Section 3006 that had been kept in captivity (and died from natural
33 causes), or (c) any mammal listed in the first sentence of Section 3006 that had been kept in
34 captivity, and that was thereafter killed with department approval.

35 **The staff invites comment on the intended scope of the prohibition in the second sentence**
36 **of existing Section 3006.**

37 **Article 2. Tags**

38 **§ 9800. Issuance of tags**

39 9800. (a) The commission shall annually direct the department to authorize,
40 pursuant to Section 2095, the sale of not more than 10 deer tags for the purpose of
41 raising funds for programs and projects as set forth in Section 9400. All revenue
42 from the sale of tags pursuant to this section shall be deposited in the Big Game
43 Management Account established in Section 9400.

1 (b) Tags issued pursuant to subdivision (a) may be sold to residents or
2 nonresidents of the state at auction or by any other method, and are not limited to
3 the fees prescribed by Section 9810.

4 (c) Funds received pursuant to this section shall augment, not supplant, any
5 other funds appropriated to the department for the preservation, restoration,
6 utilization, and management of deer. All revenue derived from the sale of tags
7 issued pursuant to subdivision (a) shall be remitted to the department by the seller.

8 **Comment.** Section 9800 continues former Fish and Game Code Section 4334 without change,
9 except as indicated below:

10 The following nonsubstantive changes are made:

- 11 • Cross-references to former Fish and Game Code Sections 1054.8, 3953, and 4332 are
12 updated.
- 13 • The words “and, upon appropriation by the Legislature, shall be expended as set forth
14 in that section” are deleted as superfluous. See Section 9405(a).
- 15 • The words “These tags” are replaced with “Tags issued pursuant to subdivision (a).”
- 16 • The words “subject to” are replaced with “limited to.”
- 17 • The words “State of California” are replaced with “state.”
- 18 • The words “These funds” are replaced with “Funds received pursuant to this section.”
- 19 • The word “revenues” is singularized.

20 **§ 9805. Design and makeup of tag**

21 9805. The commission may determine the design and makeup of the deer tag
22 and prescribe the procedures for issuance and use.

23 **Comment.** Section 9805 continues former Fish and Game Code Section 4331 without change.

24 **§ 9810. Fee**

25 9810. (a) Any person 12 years of age or over, who possesses a valid hunting
26 license, may obtain one tag for the taking of one deer by one person during the
27 current license year, upon payment of a fee as follows:

28 (1) For a resident of this state, a base fee of ten dollars (\$10) for the license year
29 beginning July 1, 1986, adjusted under Section 2780 for subsequent license years.

30 (2) For a nonresident of this state, a base fee of one hundred dollars (\$100) for
31 the license year beginning July 1, 1986, adjusted under Section 2780 for
32 subsequent license years.

33 (b) If provided in regulations adopted by the commission under Section **200**, any
34 person 12 years of age or over who possesses a deer tag for the current license
35 season may procure one additional deer tag for the taking of one additional deer
36 during the current license season, upon payment of a fee as follows:

37 (1) For a resident of this state, a base fee of twelve dollars and fifty cents
38 (\$12.50) for the license year beginning July 1, 1986, adjusted under Section 2780
39 for subsequent license years.

40 (2) For a nonresident of this state, a base fee of one hundred dollars (\$100) for
41 the license year beginning July 1, 1986, adjusted under Section 2780 for
42 subsequent license years.

1 (c) All revenues pursuant to this section shall be deposited in the Big Game
2 Management Account established in Section 9400.

3 **Comment.** Section 9810 restates former Fish and Game Code Section 4332 without
4 substantive change.

5 **Staff Note.** Proposed Section 9810 is intended to restate existing Fish and Game Code
6 Section 4332 to improve its clarity, without changing its substantive effect. The existing
7 provisions read as follows:

8 “4332. (a) Any resident of this state, 12 years of age or over, who possesses a valid hunting
9 license, may procure one tag for the taking of one deer by one person during the current license
10 year, upon payment of the base fee of ten dollars (\$10) for the license year beginning July 1,
11 1986, and the base fee as adjusted under Section 713 for subsequent license years.

12 (b) Any nonresident of this state, 12 years of age or over, who possesses a valid hunting
13 license, may procure one tag for the taking of one deer by one person during the current license
14 year, upon payment of the base fee of one hundred dollars (\$100) for the license year beginning
15 July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

16 (c) If provided in regulations adopted by the commission under Section 200, any resident of
17 this state, 12 years of age or over, who possesses a deer tag may procure one additional deer tag
18 for the taking of one additional deer during the current license season, upon payment of the base
19 fee of twelve dollars and fifty cents (\$12.50) for the license years beginning July 1, 1986, and the
20 base fee as adjusted under Section 713 for subsequent license years.

21 (d) If provided in regulations adopted by the commission under Section 200, any nonresident
22 of this state, 12 years of age or over, who possesses a deer tag may procure one additional deer
23 tag for the taking of one additional deer during the current license season, upon payment of the
24 base fee of one hundred dollars (\$100) for the license year beginning July 1, 1986, and the base
25 fee as adjusted under Section 713 for subsequent license years.

26 (e) All revenues pursuant to this section shall be deposited in the Big Game Management
27 Account established in Section 3953 and, upon appropriation by the Legislature, shall be
28 expended as set forth in that section.”

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

31 **§ 9815. Duration of tag**

32 9815. A deer tag is valid only during that portion of the current hunting license
33 year in which deer may be taken or possessed in any area.

34 **Comment.** Section 9815 continues former Fish and Game Code Section 4333 without change,
35 except as indicated below:

36 The following nonsubstantive change is made:

- 37 • The words “Tags are” are replaced with “A deer tag is.”

38 **§ 9820. Forfeiture of tags**

39 9820. (a) Any person who is convicted of a violation of any provision of this
40 code, or of any rule, regulation, or order made or adopted under this code, relating
41 to deer, shall forfeit any deer tags issued to that person, and no new deer tags shall
42 be issued to that person during the then current license year for hunting licenses.

43 (b) No person described in subdivision (a) may apply for deer tags for the
44 following license year.

45 **Comment.** Section 9820 continues former Fish and Game Code Section 4340 without change,
46 except as indicated below:

1 The following nonsubstantive changes are made:

- 2 • A comma is added for clarity.
- 3 • The words “his or her deer tags” are replaced with “any deer tags issued to that
- 4 person.”

5 Article 3. Bow Hunting

6 § 9850. Archery season

7 9850. (a) In every area in which deer may lawfully be taken during the general
8 open season, there shall be an archery season for the taking of deer with bow and
9 arrow. The commission shall prescribe the season for each area, but with a
10 minimum interval of three days immediately preceding the regular open season on
11 deer in that area.

12 (b) Except as provided in subdivision (c), a person taking or attempting to take
13 deer during the archery season shall neither carry nor have under the person’s
14 immediate control any kind of firearm.

15 (c) A peace officer listed in Chapter 4.5 (commencing with Section 830) of Title
16 3 of Part 2 of the Penal Code, whether active or honorably retired, may carry a
17 firearm capable of being concealed on the person while engaged in the taking of
18 deer with bow and arrow in accordance with subdivision (a), but shall not take or
19 attempt to take deer with the firearm.

20 **Comment.** Section 9850 continues former Fish and Game Code Section 4370 without change,
21 except as indicated below:

22 The following nonsubstantive changes are made:

- 23 • A subdivision designation is added.
- 24 • The word “is” is replaced with “shall be.”
- 25 • The words “The season for each area shall be as the commission may prescribe, with a
26 minimum interposing” are replaced with “The commission shall prescribe the season
27 for each area, but with a minimum.”
- 28 • The word “such” is replaced with “the.”
- 29 • The words “neither carry, nor have under his or her immediate control, any firearm of
30 any kind” are replaced with “neither carry nor have under the person’s immediate
31 control any kind of firearm.”
- 32 • The words “his or her” are replaced with “the.”

33 § 9855. Taking with bow and arrow

34 9855. The provisions of this code relating to deer shall be applicable to the
35 taking of deer with a bow and arrow.

36 **Comment.** Section 9855 continues former Fish and Game Code Section 4371 without change,
37 except as indicated below:

38 The following nonsubstantive change is made:

- 39 • The words “bow and arrow” are replaced with “a bow and arrow.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Article 4. Use of Parts

§ 9900. Commercial use of deer meat

9900. (a) As used in this section, “deer” includes any animal of the family Cervidae.

(b) Except as otherwise provided in this section, it is unlawful to sell, purchase, or transport for the purpose of sale any deer meat in this state, whether fresh, smoked, canned, or preserved by any means.

(c) The prohibition in subdivision (a) does not apply to the following:

(1) Conduct authorized by provisions of this code permitting the sale of domestically raised game mammals.

(2) Fallow deer meat processed by a slaughterer in accordance with Chapter 4 (commencing with Section 18650) of, and Chapter 4.1 (commencing with Section 18940) of, Part 3 of Division 9 of the Food and Agricultural Code.

(3) Deer meat imported into this state from a foreign country for the purpose of preparing and selling for human consumption a product commonly known and properly labeled as venison jerky, deer jerky, venison salami, or deer salami.

Comment. Subdivision (a) of Section 9900 continues former Fish and Game Code Section 4301(b) without change.

Subdivisions (b)-(c) restate the first sentence of former Fish and Game Code Section 4301(a) without substantive change.

Staff Notes. (1) Subdivisions (b)-(c) of proposed Section 9900 are intended to restate the first sentence of existing Fish and Game Code Sections 4301(a) to improve the clarity of that sentence, without changing its substantive effect. The existing sentence reads as follows:

“Subject to the provisions of this code permitting the sale of domestically raised game mammals, it is unlawful to sell or purchase, or transport for the purpose of sale, any deer meat in this state whether fresh, smoked, canned, or preserved by any means, except fallow deer meat processed by a slaughterer in accordance with Chapter 4 (commencing with Section 18650) of, and Chapter 4.1 (commencing with Section 18940) of, Part 3 of Division 9 of the Food and Agricultural Code, and except that deer meat may be imported into this state from a foreign country for the purpose of processing (manufacturing) and selling a product commonly known as venison or deer jerky or venison or deer salami, properly labeled as such, for human consumption.”

The staff invites comment on whether the restatement would cause any substantive change in the meaning of either section.

(2) Existing Fish and Game Code Section 4301(b) (which would be continued by proposed Section 9990(a)) provides a definition of the term “deer” as used in existing Section 4301. However, the term “deer” appears in many other sections of the existing Fish and Game Code, with no corresponding definition. See, e.g., existing Sections 450-460, 4302-4304. The inclusion of a definition of the term applicable only to one section of the code creates an inference that the term is intended to have some slightly different meaning in all other sections.

The staff invites comment on whether the definition of “deer” in Section 4301 should be made applicable to the code generally, and included with the general definitions in the first division of the proposed law.

1 **§ 9905. Importation of deer meat**

2 9905. (a) As used in this section, “deer” includes any animal of the family
3 Cervidae.

4 (b) All deer meat imported into this state shall meet all of the sanitary and
5 inspection requirements for wholesomeness, except an antemortem inspection, but
6 including a postmortem inspection, as required for other meat imported for human
7 consumption.

8 (c) Imported deer meat shall be in an identifiable condition and accompanied by
9 a bill of lading, showing the name of the consignor, the consignee, and the weight
10 of the deer meat shipped. A copy of the bill of lading shall be delivered to the
11 nearest office of the department either prior to, or not later than, two days from the
12 date of receipt of the deer meat.

13 (d) No deer meat imported into this state may leave the premises of the original
14 consignee unless one of the following occurs:

15 (1) Written permission to take the meat from the premises is received from the
16 department.

17 (2) The meat is processed into the form of the product commonly known as
18 jerky or salami.

19 **Comment.** Subdivision (a) of Section 9905 continues former Fish and Game Code Section
20 4301(b) without change.

21 Subdivisions (b)-(d) continue the second through fourth sentences of former Fish and Game
22 Code Section 4301(a) without change, except as indicated below:

23 The following nonsubstantive changes are made:

- 24 • Subdivision designations are added.
- 25 • The word “The” is replaced with “Imported.”
- 26 • The word “such” is deleted as superfluous.
- 27 • The words “unless written permission is received from the department, or unless it is
28 processed” are replaced with “unless one of the following occurs: (1) Written
29 permission to take the meat from the premises is received from the department. (2) The
30 meat is processed....”

31 **§ 9915. Use of skin or hide of deer**

32 9915. (a) The skin or hide of any deer lawfully taken may be sold, purchased,
33 tanned, or manufactured into articles for sale.

34 (b) Skins or hides of deer lawfully taken may be donated at any time to veterans’
35 organizations or veterans’ service committees for use by veterans for rehabilitation
36 purposes.

37 **Comment.** Section 9915 continues former Fish and Game Code Section 4303 without change,
38 except as indicated below:

39 The following nonsubstantive change is made:

- 40 • Subdivision designations are added.

41 **§ 9920. Needless waste of deer**

42 9920. (a) Except as provided in subdivision (b), no person shall do any of the
43 following:

1 (1) Take a deer and separate from its carcass only the head, hide, antlers, or
2 horns.

3 (2) Allow a deer in that person’s possession, or any portion of the deer’s flesh
4 that is usually eaten by humans, to be needlessly wasted through carelessness or
5 neglect.

6 (b) The prohibitions in subdivision (a) do not apply to a deer taken pursuant to
7 Section **4152**.

8 **Comment.** Section 9760 restates the portion of former Fish and Game Code Section 4304
9 applicable to deer without substantive change.

10 **Staff Notes.** (1) Proposed Section 9920 is intended to restate the portion of existing Fish and
11 Game Code Section 4304 applicable to deer to improve its clarity, without changing its
12 substantive effect. The existing section reads as follows:

13 “4304. No person shall at any time capture or destroy any deer and detach or remove from the
14 carcass only the head, hide, antlers, or horns; nor shall any person at any time leave through
15 carelessness or neglect any game mammal or game bird which is in his possession, or any portion
16 of the flesh thereof usually eaten by humans, to go needlessly to waste. The provisions of this
17 section shall not apply to game mammals taken under the authority of Sections 4152 and 4183 of
18 this code.”

19 **The staff invites comment on whether the restatement would cause any substantive
20 change in the meaning of the provision.**

21 (2) Existing Fish and Game Code Section 4183, which is cross-referenced in existing Section
22 4304, was repealed in 1984. 1984 Cal. Stat. ch. 1365. The repealed section related to taking bears
23 that kill livestock.

24 (3) The first clause of existing Section 4304 (which would be continued by proposed Section
25 9920(a)(1)) appears inconsistent with existing Sections 4302 (which would be continued by
26 proposed Section 9910) and 4303 (which would be continued by proposed Section 9915), as the
27 two latter sections both clearly contemplate separating parts of a deer from its body.

28 **The staff invites comment on this issue.**

29 Article 5. Population Management

30 § 10000. Declaration of legislative policy

31 10000. It is hereby declared to be the policy of the Legislature to encourage the
32 conservation, restoration, maintenance, and utilization of California’s wild deer
33 populations. Such conservation shall be in accordance with the principles of
34 conservation of wildlife resources set forth in **Section 1801** and in accordance
35 with the objectives and elements stated in “A Plan for California Deer,” State of
36 California, Department of Fish and Game (1976).”

37 **Comment.** Section 10000 continues former Fish and Game Code Section 450 without change,
38 except as indicated below:

39 The following nonsubstantive changes are made:

- 40 • A cross-reference to former Fish and Game Code Section 1801 is updated.
41 • The words “‘A Plan for California Deer, 1976’” are replaced with “‘A Plan for
42 California Deer,’ State of California, Department of Fish and Game (1976).”

1 **§ 10010. Deer herd management units**

2 10010. The department shall designate deer herd management units and
3 designate a manager for each unit. A unit may encompass a single deer herd or a
4 group of deer herds having similar management and habitat requirements and
5 characteristics. The boundaries of units need not follow county boundary lines,
6 unless it is appropriate that they do so.

7 **Comment.** Section 10010 continues former Fish and Game Code Section 452 without change,
8 except as indicated below:

9 The following nonsubstantive changes are made:

- 10 • The words “the manager for the units” are replaced with “a manager for each unit.”
- 11 • The words “Such units” are replaced with “A unit.”
- 12 • The words “Boundaries of such units, unless appropriate, need not follow county
13 boundary lines” are replaced with “The boundaries of units need not follow county
14 boundary lines, unless it is appropriate that they do so.”

15 **§ 10015. Management unit plans**

16 10015. (a) The department shall develop plans for deer herd management units.
17 The objectives of the plans shall be the restoration and maintenance of healthy
18 deer herds in the wild, and the provision of high quality and diversified use of deer
19 in California.

20 (b) The management plans shall contain the following program elements:

21 (1) Document existing information on deer herd management units and
22 programs, to obtain information that may be needed.

23 (2) Develop programs to maintain and increase the quality of deer habitat
24 statewide that emphasize cooperative action between the department and the
25 appropriate land management entities, both public and private. Emphasis shall be
26 directed towards identifying critical deer habitat areas and the maintenance and
27 management of such areas.

28 (3) Develop programs to reduce natural mortalities where reduction may be
29 critical to meeting deer herd plan objectives.

30 (4) Develop programs to decrease the illegal taking of deer through modern law
31 enforcement methods, supported by public and private cooperative efforts.

32 (5) Develop diversified recreational use programs, including both hunting and
33 non-hunting uses, consistent with basic individual deer herd management unit
34 capabilities.

35 (c) Deer herd management unit plans shall be reviewed annually and shall be the
36 basis for department recommendations to the commission pursuant to Section
37 10035.

38 **Comment.** Subdivision (a) of Section 10015 continues former Fish and Game Code Section
39 453 without change, except as indicated below:

40 The following nonsubstantive changes are made:

- 41 • The word “such” is deleted as superfluous.
- 42 • The word “such” is replaced with “the.”
- 43 • The words “in the wild state and to provide for” are replaced with “in the wild, and the
44 provision of.”

1 • A comma is added for clarity.

2 Subdivision (b) continues former Fish and Game Code Section 454 without change, except as
3 indicated below:

4 The following nonsubstantive changes are made:

- 5 • The word “Such” is replaced with “The.”
- 6 • The words “Such programs” are replaced with “that.”
- 7 • A comma is added for clarity.
- 8 • The word “nonhunting” is replaced with “non-hunting.”
- 9 • The words “such” and “the” are deleted as superfluous.

10 Subdivision (c) continues former Fish and Game Code Section 455 without change, except as
11 indicated below:

12 The following nonsubstantive changes is made:

- 13 • The words “this chapter” are replaced with “Section 10035.”

14 **§ 10020. Biennial report to Legislature and Commission**

15 10020. (a) The department shall biennially report to the Legislature and to the
16 commission on the progress being made toward restoration and maintenance of
17 California’s deer herds.

18 (b) The report shall include all of the following:

19 (1) A description of ongoing program activities relating to deer habitat,
20 particularly those addressing problems identifying and preserving critical deer
21 habitat areas.

22 (2) A statement of the amount of revenue derived from the sale of deer tags
23 during the two previous fiscal years.

24 (3) A list of expenditures during the two previous fiscal years.

25 (4) A list of proposed expenditures in the current fiscal year.

26 (5) A report of general benefits that have accrued to deer resources as a result of
27 programs developed pursuant to Section 10015.

28 **Comment.** Subdivision (a) of Section 10020 continues the first sentence of former Fish and
29 Game Code Section 456 without change, except as indicated below:

30 The following nonsubstantive changes are made:

- 31 • The words “Fish and Game Commission” are replaced with “commission.” See Section
32 155 (“Commission” means the Fish and Game Commission).
- 33 • The words “that is” and “the” are deleted as superfluous.
- 34 • The words “The first report shall be submitted on or before October 1, 1989.” are
35 deleted as superfluous.

36 Subdivision (b) restates the third sentence of former Fish and Game Code Section 456 without
37 substantive change.

38 **Staff Notes.** (1) The second sentence of existing Fish and Game Code Section 456, which
39 reads “The first report shall be submitted on or before October 1, 1989” would not be continued
40 in the proposed law.

41 (2) Subdivision (b) of proposed Section 10020 is intended to restate the third sentence of
42 Section 456 to improve its clarity, without changing its substantive effect. The existing provision
43 reads as follows:

44 “The report shall include program activities regarding deer habitat, particularly addressing
45 problems dealing with identification and preservation of critical deer habitat areas; the amount of
46 revenue derived from the sale of deer tags during the two previous fiscal years; a list of

1 expenditures during the two previous fiscal years and proposed expenditures during the current
2 fiscal year; and a report of general benefits accrued to the deer resources as a result of the
3 program.”

4 **The staff invites comment on whether the restatement would cause any substantive**
5 **change in the meaning of that provision.**

6 **§ 10025. Annual recommendations by department**

7 10025. (a) Not later than December 15 of each year, the department shall
8 determine its proposed recommendations to the commission relating to the
9 management of deer, including its recommendations as to whether any antlerless
10 deer hunts should be ordered.

11 (b) The recommendations shall include all of the following:

12 (1) The number, if any, of antlerless deer that should be taken in particular deer
13 management units.

14 (2) Proposed dates for any recommended taking.

15 (3) The number of permits proposed for each management unit.

16 (4) Whether the permits should be either-sex permits.

17 **Comment.** Section 10025 restates former Fish and Game Code Section 457 without
18 substantive change.

19 **Staff Note.** Proposed Section 10025 is intended to restate existing Fish and Game Code
20 Section 457 to improve its clarity, without changing its substantive effect. The existing provision
21 reads as follows:

22 “The department shall determine prior to December 15 of each year its proposed
23 recommendations to the commission, including its recommendations as to whether any antlerless
24 deer hunts should be ordered. The recommendations of the department shall include the number,
25 if any, of antlerless deer that should be taken in units, whether the permits should be either-sex
26 permits, the proposed dates for each such taking, and the number of permits proposed for each
27 unit.”

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

30 **§ 10030. Affected counties**

31 10030. (a) Not later than December 15 of each year, the department shall
32 provide notice of its proposed recommendations under Section 10025 to the board
33 of supervisors of each county affected by a recommendation, by certified mail.

34 (b) Not later than the February 1 next following the department’s notice, the
35 board of supervisors of any affected county may elect to hold a public hearing on
36 the department’s proposed recommendations. The director or the director’s
37 representative shall attend all hearings held pursuant to this subdivision.

38 (c) Not later than the February 1 next following the department’s notice, the
39 board of supervisors of any affected county that has held a public hearing pursuant
40 to subdivision (b) may by resolution object to the proposed recommendations of
41 the department, or may by resolution determine that the proposed
42 recommendations should be modified and state the necessary modifications. A
43 resolution objecting to or stating necessary modifications of the proposed

1 recommendations shall be based on testimony and information presented at a
2 hearing conducted pursuant to subdivision (b), or presented to the board of
3 supervisors at its meeting to consider the resolution.

4 (d) The board of supervisors of any affected county may, by resolution, elect not
5 to exercise the rights conferred by this section.

6 (e) The department shall not recommend to the commission, and the commission
7 shall not authorize, the taking of antlerless deer in an affected county, if the board
8 of supervisors of that county submits a resolution pursuant to subdivision (c)
9 objecting to that taking.

10 (f) If a board of supervisors of an affected county submits a resolution
11 determining that a department's proposed recommendation relating to the taking
12 of antlerless deer should be modified for that county, the department and the
13 commission shall do one of the following:

14 (1) The department shall modify its recommendations and the commission shall
15 modify its orders to incorporate the modifications determined to be necessary by
16 the county board of supervisors.

17 (2) The department shall not recommend, and the commission shall not
18 authorize, the taking of antlerless deer in that county.

19 (f) This section applies only to the counties of, and to those districts or parts of
20 districts in, Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Alpine,
21 Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt,
22 Imperial, Inyo, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Monterey,
23 Napa, Nevada, Orange, Placer, Riverside, San Luis Obispo, Santa Barbara, Santa
24 Clara, Tehama, Tuolumne, Yolo, and Yuba Counties.

25 **Comment.** Section 10030 combines and restates former Fish and Game Code Sections 458 and
26 459 without substantive change.

27 **Staff Note.** Proposed Section 10030 is intended to combine and restate existing Fish and
28 Game Code Sections 458 and 459 to improve the clarity of those sections, without changing their
29 substantive effect. The existing sections read as follows:

30 "458. The department not later than December 15 shall notify, by certified mail, the board of
31 supervisors of each county affected of the details of its recommendations under Section 457.

32 The board of supervisors of any affected county may elect to hold a public hearing on the
33 proposed recommendations of the department. Any such hearing shall be held prior to February 1.
34 The director or his or her representative shall attend the hearing.

35 The board of supervisors of any county to which this section is applicable may, by resolution,
36 elect not to exercise the rights conferred by this section.

37 This section applies only to the counties of, and to those districts or parts of districts in,
38 Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Alpine, Amador, Butte, Calaveras,
39 Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Madera, Mariposa,
40 Mendocino, Merced, Mono, Monterey, Napa, Nevada, Orange, Placer, Riverside, San Luis
41 Obispo, Santa Barbara, Santa Clara, Tehama, Tuolumne, Yolo, and Yuba Counties.

42 459. The board of supervisors of any county specified in Section 458 which has held a public
43 hearing pursuant to Section 458 may, not later than February 1, by resolution, object to the
44 proposed recommendations of the department or may, by resolution, determine that the proposed
45 recommendation should be modified, setting forth the necessary modifications.

1 A resolution objecting to, or setting forth modifications of, the proposed recommendations
2 shall be based upon the testimony and information presented at the hearing or presented to the
3 board of supervisors at its meeting to consider the resolution.

4 The department shall not recommend to the commission, and the commission shall not
5 authorize, the taking of antlerless deer in a county specified in Section 458 if it has received from
6 the board of supervisors of that county a resolution objecting to that taking. If a board of
7 supervisors of a county has submitted a resolution determining that the department's proposed
8 recommendations on the taking of antlerless deer should be modified for that county, the
9 department shall either so modify its recommendations and the commission shall so modify its
10 orders or the department shall not recommend, and the commission shall not authorize, the taking
11 of antlerless deer in that county."

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

14 (2) Existing Fish and Game Code Section 459 does not address the manner, timing, or recipient
15 of a resolution described in the section that must be "submitted" by a county's board of
16 supervisors, or "received" by an undesignated entity.

17 **The staff invites comment on whether these matters should be clarified in the proposed**
18 **law.**

19 **§ 10035. Department recommendations relating to deer hunting**

20 10035. (a) Prior to the February meeting of the commission required by **Section**
21 **207**, the department shall recommend to the commission the deer herd
22 management units to be placed under a general deer hunting season.

23 (b) At the same time, the department shall do all of the following:

24 (1) Recommend, subject to the provisions of Section 10030, whether any
25 antlerless deer should be taken, and if so in which deer herd management units.

26 (2) If in the judgment of the department there are deer herd management units in
27 which hunting pressure would adversely affect the deer herd, impair the hunting
28 experience, or endanger the public safety, recommend those deer herd
29 management units where hunter numbers should be restricted, and those which
30 should be removed from the general deer hunting season designation.

31 (3) Inform the commission of the condition of each deer herd management unit.

32 (4) Submit its recommendations determined in accordance with the provisions of
33 Sections 10025 and 10030.

34 (5) Recommend the establishment of any hunter-restricted quota units, if
35 needed, and the number of the quota and manner in which the quota permits
36 should be issued.

37 (d) Upon receipt of the recommendations and information required by this
38 section, the commission shall make that material and its determinations regarding
39 proposed regulations known to the public.

40 (e) As used in this section, "general deer hunting season" means the annual
41 season for the area in question as is set by the commission under its general
42 regulatory powers, or set by statute, for the taking of male deer.

43 **Comment.** Subdivisions (a) through (d) of Section 10035 restate former Fish and Game Code
44 Section 460 without substantive change.

1 Subdivision (e) continues former Fish and Game Code Section 451 without change, except as
2 indicated below:

3 The following nonsubstantive changes are made:

- 4 • The word “chapter” is replaced with “section.”
- 5 • A comma is added for clarity.

6 **☞ Staff Notes.** (1) Proposed Section 10035(a)-(d) is intended to restate existing Fish and Game
7 Code Section 460 to improve its clarity, without changing its substantive effect. The existing
8 section reads as follows:

9 “460. Prior to the February meeting of the commission as required in Section 207, the
10 department shall recommend to the commission those deer herd units to be placed under a general
11 deer hunting season. At the same time, the department shall recommend to the commission,
12 subject to the provisions of Sections 458 and 459, whether any antlerless deer should be taken
13 and in what deer herd units antlerless deer are to be taken. If in the judgment of the department
14 there are deer herd units in which hunting pressure would adversely affect the deer herd, impair
15 the hunting experience, or endanger the public safety, the department shall also recommend to the
16 commission those deer herd units where hunter numbers should be restricted and which should be
17 removed from the general deer hunting season designation. The department shall inform the
18 commission of the condition of each deer herd unit. Upon receipt of the recommendations and
19 information required in this section, the commission shall make that material known to the public
20 and its determinations regarding proposed regulations. The recommendations of the department
21 shall, in accordance with the provisions of Sections 458 and 459, include the number, if any, of
22 antlerless deer that should be taken in deer herd units, whether the permits should be either-sex
23 permits, the proposed dates for the taking, and the number of permits proposed for each deer herd
24 unit. At the same time, the department shall recommend the establishment of any hunter-
25 restricted quota units, if needed, and the number of the quota and manner in which the quota
26 permits should be issued.”

27 **The staff invites comment on whether the restatement would cause any substantive**
28 **change in the meaning of existing Section 460.**

29 (2) Although existing Section 451 (which would be continued by proposed Section 10035(e)
30 defines the term “general deer hunting season” as used in the chapter in which Section 451
31 appears, the term is only used in one section of that chapter, existing Section 460 (which would
32 be continued by proposed Section 10035(a)-(d). In proposed Section 10035(e), the reference to
33 “chapter” is therefore revised to refer to this “section.”

34 **The staff invites comment on whether the restatement would cause any substantive**
35 **change in the meaning of existing Section 451.**

36 Article 6. Take to Protect Property

37 **§ 10040. Permit to take deer**

38 10040. (a) Any owner or tenant of land or property that is being damaged or
39 destroyed or is in immediate danger of being damaged or destroyed by deer may
40 apply to the department for a permit to kill those deer. The department, upon
41 satisfactory evidence of actual or immediately threatened damage or destruction
42 shall, pursuant to regulations adopted by the commission, issue a revocable permit
43 for the taking and disposition of the responsible deer, for a designated period not
44 to exceed 60 days.

1 (b) The regulations of the commission shall provide for the types of weapons
2 that may be used to kill deer pursuant to subdivision (a), and shall also provide for
3 the following:

4 (1) The weapons provided for shall be those that will ensure humane killing.

5 (2) The regulations shall provide for the use of a sufficient variety of weapons to
6 permit the designation of particular types to be used in any particular locality
7 commensurate with the need to protect persons and property.

8 (3) Firearms using .22-caliber rimfire cartridges may be used only when
9 authorized by the director or his designee.

10 (4) No pistols shall be used.

11 (5) Rifle ammunition used shall have expanding bullets.

12 (6) Shotgun ammunition shall have only single slugs, or, if authorized by the
13 department, 0 or 00 buckshot.

14 (c) The caliber and type of weapon to be used by each permittee shall be
15 specified in each permit by the officer issuing the permit, who shall take into
16 consideration the location of the area, the necessity for clean kills, the safety
17 factor, local firearms ordinances, and other factors that apply.

18 (d) At the time a permit is issued pursuant to subdivision (a), the department
19 shall issue tags similar to those provided for in **Section 4331**. The permittee shall
20 carry the tags while hunting the deer for which the permit was issued, and upon
21 killing any deer, shall immediately do all of the following:

22 (1) Fill out both parts of the tag, and clearly punch out the date of the kill.

23 (2) Immediately attach one part of the completed tag to the antlers of antlered
24 deer, or to the ear of any other deer, and keep that part of the tag attached to the
25 deer until 10 days after the permit has expired.

26 (3) Obtain a countersignature on the other part of the tag pursuant to Section
27 4341.

28 (4) Send the countersigned part of the tag to the department.

29 (e) A permit issued pursuant to this section may be renewed only after a finding
30 by the department that further damage has occurred or will occur, unless that
31 permit is renewed. A person seeking renewal of a permit pursuant to this
32 subdivision shall do all of the following:

33 (1) Account for all tags previously issued with all prior permits.

34 (2) If any previously issued tags are unused, show either of the following:

35 (A) That any deer previously killed pursuant to a previously issued permit could
36 not reasonably have been tagged.

37 (B) Why the offending deer were not killed within the time allotted for that
38 killing, and why the killing would be accomplished under a new time period.

39 **Comment.** Section 10040 restates former Fish and Game Code Section 4181.5 without
40 substantive change.

41 **Staff Note.** Proposed Section 10040 is intended to restate existing Fish and Game Code
42 Section 4181.5 to improve the clarity of that section, without changing its substantive effect. The
43 existing section reads as follows:

1 “4181.5. (a) Any owner or tenant of land or property that is being damaged or destroyed or is
2 in immediate danger of being damaged or destroyed by deer may apply to the department for a
3 permit to kill those deer. The department, upon satisfactory evidence of that damage or
4 destruction, actual or immediately threatened, shall issue a revocable permit for the taking and
5 disposition of those deer for a designated period not to exceed 60 days under regulations
6 promulgated by the commission.

7 (b) The regulations of the commission shall include provisions concerning the type of weapons
8 to be used to kill the deer. The weapons shall be those as will ensure humane killing, but the
9 regulations of the commission shall provide for the use of a sufficient variety of weapons to
10 permit the designation of particular types to be used in any particular locality commensurate with
11 the need to protect persons and property. Firearms using .22-caliber rimfire cartridges may be
12 used only when authorized by the director or his designee. No pistols shall be used. The caliber
13 and type of weapon to be used by each permittee shall be specified in each permit by the issuing
14 officer who shall take into consideration the location of the area, the necessity for clean kills, the
15 safety factor, local firearms ordinances, and other factors that apply. Rifle ammunition used shall
16 have expanding bullets; shotgun ammunition shall have only single slugs, or, if authorized by the
17 department, 0 or 00 buckshot.

18 (c) The department shall issue tags similar to those provided for in Section 4331 at the same
19 time the permit is issued. A permittee under this section shall carry the tags while hunting deer,
20 and upon the killing of any deer, shall immediately fill out both parts of the tag and punch out
21 clearly the date of the kill. One part of the tag shall be immediately attached to the antlers of
22 antlered deer or to the ear of any other deer and kept attached until 10 days after the permit has
23 expired. The other part of the tag shall be immediately sent to the department after it has been
24 countersigned by any person authorized by Section 4341.

25 (d) A permit issued pursuant to this section may be renewed only after a finding by the
26 department that further damage has occurred or will occur unless that permit is renewed. A
27 person seeking renewal of the permit shall account for all prior tags issued at the time he or she
28 received any prior permits, and if any tags are unused, he or she shall show either that any deer
29 killed could not reasonably be tagged or why the killing was not accomplished within the allotted
30 time and why that killing would be accomplished under a new time period.”

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

33 **§ 10045. Access by licensed hunters for depredator control**

34 10045. (a) If a landowner or tenant applies for a permit under Section 10040 to
35 take deer, the department shall inform the applicant about available options for
36 allowing access by licensed hunters, including, but not limited to, access
37 authorized pursuant to **Article 3 (commencing with Section 1570) of Chapter 5**
38 **of Division 2** to control deer.

39 (b) The commission, in lieu of a permit described in Section 10040, and with the
40 consent of, or upon the request of, the landowner or tenant, may pursuant to
41 appropriate regulation authorize the issuance of permits to persons holding valid
42 hunting licenses to take deer in sufficient numbers to stop the damage or
43 threatened damage. Before issuing permits to licensed hunters, the department
44 shall investigate and determine the number of permits necessary, the territory
45 involved, the dates of the proposed hunt, the manner of issuing the permits, and
46 the fee for the permit.

47 **Comment.** Section 10045 restates the part of former Fish and Game Code Section 4188
48 applicable to deer without substantive change.

1 **Staff Note.** Proposed Section 10045 is intended to restate the part of existing Fish and Game
2 Code Section 4188 applicable to deer to improve its clarity, without changing its substantive
3 effect. The existing provision reads as follows:

4 “4188. (a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or
5 wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or
6 tenant about available options for allowing access by licensed hunters, including, but not limited
7 to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of
8 Division 2 to control wild pigs, wild turkeys, and deer.

9 (b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of,
10 or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the
11 issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or
12 deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to
13 licensed hunters, the department shall investigate and determine the number of permits necessary,
14 the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the
15 fee for the permit.”

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

18 Article 7. Enhanced Penalties

19 § 10055. Enhanced penalty for specified violations

20 10055. (a) Notwithstanding Section **12002, 12003.2, 12008, or 12008.5**, the
21 punishment for any person who knowingly violated and has been convicted of any
22 of the following provisions where the violation involved a trophy deer shall be a
23 fine of not less than five thousand dollars (\$5,000), nor more than forty thousand
24 dollars (\$40,000), or imprisonment in the county jail for not more than one year,
25 or both that fine and imprisonment:

26 (1) Section **2001**, if the person took a deer outside the established season.

27 (2) Section **2005**.

28 (3) Section 257.5 of Title 14 of the California Code of Regulations.

29 (4) Section **4304**.

30 (5) Section **4330**.

31 (6) Section **1054.2**, if the person failed to procure the required license or tag
32 prior to taking a deer.

33 (b) The commission shall adopt regulations to implement this section, including
34 establishing a trophy designation and monetary value based on the size or related
35 characteristics of deer or parts of deer.

36 (c) All revenue from fines imposed pursuant to this section shall be deposited in
37 the Big Game Management Account established in Section 9400 and shall be used
38 for the big game management purposes described in that section.

39 (d) Moneys equivalent to 50 percent of the revenue from any fine collected
40 pursuant to this section shall be paid to the county in which the offense was
41 committed, pursuant to Section **13003**. The county board of supervisors shall first
42 use revenues pursuant to this subdivision to reimburse the costs incurred by the
43 district attorney or city attorney in investigating and prosecuting the violation. Any
44 excess revenues may be expended in accordance with Section **13103**.

1 **Comment.** Section 10055 continues the part of former Fish and Game Code Section 12013.3
2 applicable to deer without change, except as indicated below:

3 The following nonsubstantive changes are made:

- 4 • Cross-references to former Fish and Game Code Sections 2001, 2005, 3953, 4304,
5 4330, 1054.2, 12002, 12003.2, 12008, 12008.5, and 13003 are updated.
- 6 • The words “any of” are added for clarity.
- 7 • The word “thereof” is replaced with “of deer.”

8 CHAPTER 5. ELK

9 Article 1. Take Generally

10 **Staff Note.** Existing law does not include an express requirement that a person have a tag in
11 order to lawfully take an elk. As seen below, there are provisions governing the issuance of a tag,
12 but no requirement that a tag be obtained. Compare proposed Sections 9505 (bear), 9700 (deer),
13 10605 (wild pig). Nor is there any provision requiring that a tag be attached to an elk that has
14 been taken, that a tag be countersigned, or that any part of the elk be retained and shown to law
15 enforcement on demand. Compare proposed Sections 9570, 9600 (bear), 9710, 9715 (deer).
16 These seem like significant gaps in the law governing sport hunting of elk.

17 **The staff invites comment on this issue.**

18 § 10120. Killing elk held in captivity

19 10120. (a) Except as authorized under a domesticated game breeder’s license, an
20 elk kept in captivity may be killed only with the approval of the department, and
21 under regulations adopted by the commission.

22 (b) The carcass of an elk described in subdivision (a) may not be sold, and shall
23 be disposed of as directed by the department.

24 **Comment.** Section 10120 continues the part of former Fish and Game Code Section 3006
25 applicable to elk without change, except as indicated below:

26 The following nonsubstantive changes are made:

- 27 • The word “any” is replaced with “an.”
- 28 • The words “such regulations as the commission may prescribe” are replaced with
29 “regulations adopted by the commission.”
- 30 • A reference to a “part” of an elk is deleted as superfluous. See Section 95 (reference to
31 animal generally includes part of animal).
- 32 • The words “of any such mammal” are replaced with “of an elk described in subdivision
33 (a).”
- 34 • The words “in such manner as the department may direct” are replaced with “as
35 directed by the department.”

36 **Staff Note.** Existing Fish and Game Code Section 3006 mandates special statutory protection
37 for deer, elk, or bears that have been kept in captivity:

38 “Except as authorized under a domesticated game breeder’s license, any deer, elk, or bear kept
39 in captivity may be killed only with the approval of the department, and under such regulations as
40 the commission may prescribe. The carcass, or any part thereof, of any such mammal may not be
41 sold, and shall be disposed of in such manner as the department may direct.”

42 Proposed Section 10120 would continue Section 3006, to the extent it applies to elk.

1 The meaning of the reference in the second sentence of Section 3006 (which would be
2 continued by proposed Section 9930(b)) to “any such mammal” is not clear. The object of that
3 reference (and scope of the prohibition in the second sentence of Section 3006) could be
4 understood as (a) any mammal listed in the first sentence of Section 3006; (b) any mammal listed
5 in the first sentence of Section 3006 that had been kept in captivity (and died from natural
6 causes), or (c) any mammal listed in the first sentence of Section 3006 that had been kept in
7 captivity, and that was thereafter killed with department approval.

8 **The staff invites comment on the intended scope of the prohibition in the second sentence**
9 **of existing Section 3006.**

10 Article 2. Tags

11 § 10150. Valid hunting license

12 10150. To obtain a tag for the taking of elk, a person must possess a valid
13 hunting license.

14 **Comment.** Section 10150 restates former Fish and Game Code Section 332(b) without
15 substantive change.

16  **Staff Note.** Proposed Section 10150 is intended to restate existing Fish and Game Code
17 Section 332(b) to improve its clarity, without changing its substantive effect. The existing
18 provision reads as follows:

19 “Only a person possessing a valid hunting license may obtain a tag for the taking of elk.”

20 **The staff invites comment on whether the restatement would cause any substantive**
21 **change in the meaning of that provision.**

22 § 10155. Issuance of tags

23 10155. (a) The commission shall annually direct the department to authorize not
24 more than three elk hunting tags for the purpose of raising funds for programs and
25 projects to benefit elk. These tags may be sold at auction to residents or
26 nonresidents of the state or by another method and are not subject to the fee
27 limitation prescribed in Section 10160. All revenues from sales pursuant to this
28 subdivision shall be deposited in the Big Game Management Account established
29 in Section 9400.

30 (b) The commission shall direct the department to annually authorize one elk tag
31 of the total number of tags available for issuance to nonresidents of the state.

32 **Comment.** Section 10155 continues former Fish and Game Code Section 332(d)-(e) without
33 change, except as indicated below:

34 The following nonsubstantive changes are made:

- 35 • Cross-references to former Fish and Game Code Sections 332(c) and 3953 are updated.
- 36 • The words “and, upon appropriation by the Legislature, shall be expended as set forth
37 in that section” are deleted as superfluous. See Section 9405(a).

38 § 10160. Fee for tag

39 10160. (a) The fee for an elk tag shall be as follows:

40 (1) For a resident of the state, a base fee of one hundred sixty-five dollars
41 (\$165), adjusted under Section 2780.

1 (2) For a nonresident, the commission shall, by regulation, fix the fee at not less
2 than a base fee of one thousand fifty dollars (\$1,050), adjusted under Section
3 2780.

4 (b) The fees from the sale of elk tags shall be deposited in the Big Game
5 Management Account established in Section 9400.

6 **Comment.** Section 10160 continues former Fish and Game Code Section 332(c) without
7 change, except as indicated below:

8 The following nonsubstantive changes are made:

- 9 • Subdivision and paragraph designations are added.
- 10 • The words “The department may issue an elk tag upon payment of a fee. The fee for a
11 tag shall be” are replaced with “The fee for an elk tag shall be as follows:.”
- 12 • The words “one hundred sixty-five dollars (\$165) for a resident of the state, as
13 adjusted” are replaced with “For a resident of the state, a base fee of one hundred sixty-
14 five dollars (\$165), adjusted.”
- 15 • Cross-references to former Fish and Game Code Sections 713 and 3953 are updated.
- 16 • The words “On or before July 1, 2007, the commission shall, by regulation, fix the fee
17 for a nonresident of the state at not less than one thousand fifty dollars (\$1,050), as
18 adjusted” are replaced with “For a nonresident, the commission shall, by regulation, fix
19 the fee at not less than a base fee of one thousand fifty dollars (\$1,050), adjusted.”
- 20 • The words “from the sale of elk tags” are added for clarity.
- 21 • The words “and, upon appropriation by the Legislature, shall be expended, in addition
22 to moneys budgeted for salaries of the department as set forth in Section 3953” are
23 deleted as superfluous. See Section 9405(a).

24 Article 3. Population Management

25 § 10200. Regulation of take

26 10200. The commission may determine and fix the area or areas, the seasons
27 and hours, the bag and possession limit, and the number of elk that may be taken
28 under rules and regulations that the commission may adopt from time to time. The
29 commission may authorize the taking of tule elk if the average of the department’s
30 statewide tule elk population estimates exceeds 2,000 animals, or the Legislature
31 determines, pursuant to the reports required by Section **3951**, that suitable areas
32 cannot be found in the state to accommodate that population in a healthy
33 condition.

34 **Comment.** Section 10200 continues former Fish and Game Code Section 332(a) without
35 change, except as indicated below:

36 The following nonsubstantive changes are made:

- 37 • A cross-reference to former Fish and Game Code Section 3951 is updated.

38 § 10210. Tule elk management plan

39 10210. The department shall develop a statewide elk management plan,
40 consistent with the state’s wildlife policy as set forth in **Section 1801**. The
41 statewide elk management plan shall emphasize maintaining sufficient elk
42 populations in perpetuity, while considering all of the following:

1 (a) Characteristics and geographic range of each elk subspecies within the state,
2 including Roosevelt elk, Rocky Mountain elk, and tule elk.

3 (b) Habitat conditions and trends within the state.

4 (c) Major factors affecting elk within the state, including, but not limited to,
5 conflicts with other land uses.

6 (d) Management activities necessary to achieve the goals of the plan and to
7 alleviate property damage.

8 (e) Identification of high priority areas for elk management.

9 (f) Methods for determining population viability and the minimum population
10 level needed to sustain local herds.

11 (g) Description of the necessary contents for individual herd management plans
12 prepared for high priority areas.

13 **Comment.** Section 10210 continues former Fish and Game Code Section 3952 without
14 change, except as indicated below:

15 The following nonsubstantive change is made:

- 16 • A cross-reference to former Fish and Game Code Section 1801 is updated.

17 **§ 10215. Relocation**

18 10215. (a) When relocating tule elk, the department shall relocate the elk in
19 areas suitable to them in the state, and shall cooperate to the maximum extent
20 possible with federal and local agencies and private property owners in relocating
21 tule elk in suitable areas under their jurisdiction or ownership. When property or
22 environmental damage occurs, emphasis shall be placed on managing each tule elk
23 herd at a biologically sound level through the use of relocation, regulated hunting,
24 or other appropriate methods, individually or in combination, as determined by the
25 department in accordance with the statewide elk management plan developed
26 pursuant to **Section 3952**, after consulting with local landowners.

27 (b) The number of tule elk in the Owens Valley shall not be permitted to
28 increase beyond 490, or any greater number hereafter determined by the
29 department to be the Owens Valley's holding capacity in accordance with game
30 management principles.

31 **Comment.** Section 10215 continues former Fish and Game Code Section 3951 without
32 change, except as indicated below:

33 The following nonsubstantive changes are made:

- 34 • Subdivision designations are added.
- 35 • The first sentence of former Fish and Game Code Section 3951 is deleted as
36 superfluous. See Section 9900.
- 37 • A cross-reference to former Fish and Game Code Section 3952 is updated.

38 **Article 4. Take to Protect Property**

39 **§ 10230. Depredation permit**

40 10230. (a) Except as provided in **Section 4181.1**, an owner or tenant of land or
41 property that is being damaged or destroyed, or is in danger of being damaged or

1 destroyed, by elk, may apply to the department for a permit to kill the elk causing
2 or threatening the damage or destruction.

3 (b) Subject to the limitations in subdivisions (g) and (i), the department, upon
4 satisfactory evidence of actual or immediately threatened damage or destruction of
5 land or property, shall issue a revocable permit for the taking and disposition of
6 the responsible elk, under regulations adopted by the commission. The permit
7 shall include a statement of the penalties that may be imposed for a violation of
8 the permit conditions.

9 (c) Elk taken under a permit issued pursuant to subdivision (b) shall not be sold
10 or shipped from the premises on which they are taken, except pursuant to
11 instructions from the department.

12 (d) Prior to issuing a depredation permit pursuant to subdivision (a), the
13 department shall do all of the following:

14 (1) Verify the actual or immediately threatened damage or destruction.

15 (2) Provide a written summary of corrective measures necessary to immediately
16 alleviate the problem.

17 (3) Determine the viability of the local herd, and determine the minimum
18 population level needed to maintain the herd.

19 (4) Ensure the permit will not reduce the local herd below the minimum.

20 (5) Work with affected landowners to develop measures to achieve long-term
21 resolution, while maintaining viability of the herd.

22 (e) After completing the statewide elk management plan pursuant to **Section**
23 **3952**, the department shall use the information and methods contained in the plan
24 to meet the requirements of paragraphs (3), (4), and (5) of subdivision (d).

25 (f) It is unlawful for any person to violate the terms of any permit issued
26 pursuant to this section.

27 **Comment.** Section 10230 restates the part of former Fish and Game Code Section 4181
28 applicable to elk without substantive change.

29 **Staff Note.** Proposed Section 10230 is intended to restate the part of existing Fish and Game
30 Code Section 4181 applicable to elk to improve the clarity of that language, without changing its
31 substantive effect. Existing Section 4181 reads as follows:

32 “4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is
33 being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver,
34 wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the
35 animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory
36 evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable
37 permit for the taking and disposition of the animals under regulations adopted by the commission.
38 The permit shall include a statement of the penalties that may be imposed for a violation of the
39 permit conditions. Animals so taken shall not be sold or shipped from the premises on which they
40 are taken except under instructions from the department. No iron-jawed or steel-jawed or any
41 type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any
42 type may be used to take any gray squirrel or wild turkey pursuant to this section. The department
43 shall designate the type of trap to be used to ensure the most humane method is used to trap gray
44 squirrels. The department may require trapped squirrels to be released in parks or other
45 nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under
46 this section.

1 (b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following
2 facts:

- 3 (1) Why the issuance of the permit was necessary.
4 (2) What efforts were made to solve the problem without killing the bears.
5 (3) What corrective actions should be implemented to prevent reoccurrence.

6 (c) With respect to wild pigs, the department shall provide an applicant for a depredation
7 permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of
8 Section 4181.1 with written information that sets forth available options for wild pig control,
9 including, but not limited to, depredation permits, allowing periodic access to licensed hunters,
10 and holding special hunts authorized pursuant to Section 4188. The department may maintain and
11 make available to these persons lists of licensed hunters interested in wild pig hunting and lists of
12 nonprofit organizations that are available to take possession of depredating wild pig carcasses.

13 (d) With respect to elk, the following procedures shall apply:

14 (1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all
15 of the following:

16 (A) Verify the actual or immediately threatened damage or destruction.

17 (B) Provide a written summary of corrective measures necessary to immediately alleviate the
18 problem.

19 (C) Determine the viability of the local herd, and determine the minimum population level
20 needed to maintain the herd.

21 (D) Ensure the permit will not reduce the local herd below the minimum.

22 (E) Work with affected landowners to develop measures to achieve long-term resolution, while
23 maintaining viability of the herd.

24 (2) After completing the statewide elk management plan pursuant to Section 3952, the
25 department shall use the information and methods contained in the plan to meet the requirements
26 of subparagraphs (C), (D), and (E) of paragraph (1).”

27 **The staff invites comment on whether the restatement would cause any substantive change**
28 **in the meaning of the provision.**

29 Article 5. Penalties

30 § 10250. Enhanced penalty for specified violations

31 10250. (a) Notwithstanding Section **12002, 12003.2, 12008, or 12008.5**, the
32 punishment for any person who knowingly violated and has been convicted of any
33 of the following provisions where the violation involved a trophy elk shall be a
34 fine of not less than five thousand dollars (\$5,000), nor more than forty thousand
35 dollars (\$40,000), or imprisonment in the county jail for not more than one year,
36 or both that fine and imprisonment:

37 (1) Section **2001**, if the person took an elk outside the established season.

38 (2) Section **2005**.

39 (3) Section 257.5 of Title 14 of the California Code of Regulations.

40 (4) Section **4304**.

41 (5) Section **4330**.

42 (6) Section **1054.2**, if the person failed to procure the required license or tag
43 prior to taking an elk.

44 (b) The commission shall adopt regulations to implement this section, including
45 establishing a trophy designation and monetary value based on the size or related
46 characteristics of elk or parts of elk.

1 (c) All revenue from fines imposed pursuant to this section shall be deposited in
2 the Big Game Management Account established in Section 9400 and shall be used
3 for the big game management purposes described in that section.

4 (d) Moneys equivalent to 50 percent of the revenue from any fine collected
5 pursuant to this section shall be paid to the county in which the offense was
6 committed, pursuant to Section **13003**. The county board of supervisors shall first
7 use revenues pursuant to this subdivision to reimburse the costs incurred by the
8 district attorney or city attorney in investigating and prosecuting the violation. Any
9 excess revenues may be expended in accordance with Section **13103**.

10 **Comment.** Section 10250 continues the part of former Fish and Game Code Section 12013.3
11 applicable to elk without change, except as indicated below:

12 The following nonsubstantive changes are made:

- 13 • Cross-references to former Fish and Game Code Sections 2001, 2005, 3953, 4304,
14 4330, 1054.2, 12002, 12003.2, 12008, 12008.5, and 13003 are updated.
- 15 • The words “has” and “any of” are added for clarity.
- 16 • The word “thereof” is replaced with “of elk.”

17 CHAPTER 6. ANTELOPE

18 Article 1. Take Generally [Reserved]

19  **Staff Note.** Existing law does not include an express requirement that a person have a tag in
20 order to lawfully take an antelope. As seen below, there are provisions governing the issuance of
21 a tag, but no requirement that a tag be obtained. Compare proposed Sections 9505 (bear), 9700
22 (deer), 10605 (wild pig). Nor is there any provision requiring that a tag be attached to an antelope
23 that has been taken, that a tag be countersigned, or that any part of the antelope be retained and
24 shown to law enforcement on demand. Compare proposed Sections 9570, 9600 (bear), 9710,
25 9715 (deer). These seem like significant gaps in the law governing sport hunting of antelope.

26 **The staff invites comment on this issue.**

27 Article 2. Tags

28 § 10400. Tags

29 10400. (a) The commission shall direct the department to annually authorize not
30 less than one antelope tag or more than 1 percent of the total number of tags
31 available for the purpose of raising funds for programs and projects to benefit
32 antelope. These tags may be sold at auction to residents or nonresidents of the
33 state or by another method and are not subject to the fee limitation prescribed in
34 Section 10405. All revenues from sales pursuant to this subdivision shall be
35 deposited in the Big Game Management Account established in Section 9400.

36 (b) The commission shall direct the department to annually authorize one
37 antelope tag of the total number of tags available for issuance to nonresidents of
38 the state.

Article 4. Penalties

§ 10415. Enhanced penalty for specified violations

10415. (a) Notwithstanding Section **12002**, **12003.2**, **12008**, or **12008.5**, the punishment for any person who knowingly violated and has been convicted of any of the following provisions where the violation involved a trophy antelope shall be a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or imprisonment in the county jail for not more than one year, or both that fine and imprisonment:

(1) Section **2001**, if the person took an antelope outside the established season.

(2) Section **2005**.

(3) Section 257.5 of Title 14 of the California Code of Regulations.

(4) Section **4304**.

(5) Section **4330**.

(6) Section **1054.2**, if the person failed to procure the required license or tag prior to taking an antelope.

(b) The commission shall adopt regulations to implement this section, including establishing a trophy designation and monetary value based on the size or related characteristics of antelope or parts of antelope.

(c) All revenue from fines imposed pursuant to this section shall be deposited in the Big Game Management Account established in Section 9400 and shall be used for the big game management purposes described in that section.

(d) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section **13003**. The county board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section **13103**.

Comment. Section 10415 continues the part of former Fish and Game Code Section 12013.3 applicable to antelope without change, except as indicated below:

The following nonsubstantive changes are made:

- Cross-references to former Fish and Game Code Sections 2001, 2005, 3953, 4304, 4330, 1054.2, 12002, 12003.2, 12008, 12008.5, and 13003 are updated.
- The words “has” and “any of” are added for clarity.
- The word “thereof” is replaced with “of antelope.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

CHAPTER 7. WILD PIGS

Article 1. General Provisions

§ 10600. “Wild pigs”

10600. For purposes of this chapter, “wild pig” means free-roaming pigs not distinguished by branding, ear marking, or other permanent identification methods.

Comment. Section 10600 continues former Fish and Game Code Section 4650 without change, except as indicated below:

The following substantive change is made:

- The provision is made applicable to the provisions that continue former Fish and Game Code Sections 4181, 4181.1, 4181.2, and 4188.

The following nonsubstantive change is made:

- The words “Wild pigs, as used in this chapter means free-roaming pigs” are replaced with “For purposes of this chapter, “wild pig” means a free-roaming pig.”

Staff Note. Existing Section 4650 provides a definition of the term “wild pigs,” but limits the application of the definition to the provisions in the chapter of the existing code in which Section 4650 appears. (Those provisions are continued in Articles 1 through 4 of this chapter.)

However, the term “wild pig” is used in several other provisions of the existing code, without definition. Among those provisions are existing Sections 4181, 4181.1, 4181.2, and 4188 (which would be continued by the proposed provisions in Article 5 of this chapter), all relating to the taking of wild pigs that are damaging or injuring property. The staff believes it would be minor substantive improvement to extent the application of the definition of the term “wild pig” to those provisions, and has therefore proposed a revision of this provision to achieve that objective.

The staff invites comment on this revision. The staff also invites comment on whether the definition of “wild pig” in this provision should be generalized to apply throughout the proposed law, and relocated with the other generally applicable definitional provisions in the proposed law.

Article 2. Take Generally

§ 10605. Tag requirement

10605. It is unlawful to take any wild pig, except as provided in Section 10665 or Section 10670, without first obtaining a tag authorizing the taking of that wild pig in accordance with this chapter.

Comment. Section 10605 continues former Fish and Game Code Section 4652 without change, except as indicated below:

The following substantive change is made:

- The provision is made applicable to the provision that continues former Fish and Game Code Section 4181.1.

The following nonsubstantive changes are made:

- A cross-reference to former Fish and Game Code Section 4181 is updated.
- The word “procuring” is replaced with “obtaining.”

Staff Note. This provision appears to prohibit taking a wild pig without first obtaining a wild pig tag, with an exception for the take of a wild pig pursuant to a depredation permit under

1 existing Fish and Game Code Section 4181 (which would be continued by proposed Section
2 10670). There is another provision, existing Section 4181.1 (which would be continued by
3 proposed Section 10665), which permits the immediate take of a wild pig that is caught in the act
4 of damaging property or specified natural resources.

5 As that provision appears to be another exception to the general requirement that a person
6 taking a wild pig first obtain a tag, the staff believes it would be a minor substantive improvement
7 to include a reference to that provision in proposed Section 10605, and has therefore proposed a
8 revision of this provision to achieve that objective.

9 **The staff invites comment on this revision.**

10 **§ 10607. Tagging of wild pig**

11 10607. (a) The holder of a wild pig tag shall keep the tag in his or her possession
12 while hunting wild pig.

13 (b) Before the taking of any wild pig, the holder of a wild pig tag, except for
14 wild pig tags issued through the Automated License Data System, shall legibly
15 write or otherwise affix the holder's hunting license number to the wild pig tag.

16 (c) Upon the killing of any wild pig, the date of the kill shall be clearly marked
17 by the holder of the tag on both parts of the tag. Before transporting the pig, a tag
18 shall be attached to the carcass by the holder of the tag. The holder of the wild pig
19 tag shall immediately, upon harvesting a pig, notify the department in a manner
20 specified by the commission.

21 **Comment.** Section 10607 continues former Fish and Game Code Section 4657 without
22 change, except as indicated below:

23 The following nonsubstantive changes are made:

- 24 • Subdivision designations are added.
- 25 • The words "his or her" are replaced with "the holder's."

26 **Staff Note.** The staff invites comment on whether a more common term (e.g., "taking") could
27 be substituted for the word "harvesting" as used in existing Fish and Game Code Section 4657.

28 **Article 3. Tags**

29 **§ 10610. Design and issuance of wild pig tag**

30 10610. The department may determine the design and type of information to be
31 included on the wild pig tag and prescribe the procedures for the issuance and use
32 of the tag.

33 **Comment.** Section 10610 continues former Fish and Game Code Section 4653 without
34 change.

35 **§ 10615. Obtaining tag**

36 10615. (a) To obtain a wild pig tag, a person must be 12 years of age or older,
37 and possess either a valid hunting license, or if a nonresident, a valid California
38 nonresident hunting license.

39 (b) A person authorized to obtain a wild pig tag may obtain the number of wild
40 pig tags corresponding to the number of wild pigs that may legally be taken by one

1 person during the license year, upon payment of the fee required by Section
2 10625.

3 **Comment.** Section 10615 restates the part of former Fish and Game Code Section 4654 that
4 relates to prerequisites for obtaining a wild pig tag, without substantive change.

5 **Staff Note.** Proposed Section 10615 is intended to restate the part of existing Fish and Game
6 Code Section 4654 that relates to prerequisites for obtaining a wild pig tag, to improve the clarity
7 of that language, without changing its substantive effect. The remainder of Section 4654, relating
8 to fees for wild pig tags, would be continued by proposed Section 10625(a).

9 Section 4654 reads as follows:

10 “4654. (a) Any resident of this state, 12 years of age or older, who possesses a valid hunting
11 license, may procure the number of wild pig tags corresponding to the number of wild pigs that
12 may legally be taken by one person during the license year upon payment of a base fee of fifteen
13 dollars (\$15), for each wild pig tag.

14 (b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident
15 hunting license, may procure the number of wild pig tags corresponding to the number of wild
16 pigs that may legally be taken by one person during the license year upon payment of a base fee
17 of fifty dollars (\$50), for each wild pig tag.

18 (c) The base fees specified in this section are applicable to the 2004 license year, and shall be
19 adjusted annually thereafter pursuant to Section 713.”

20 **The staff invites comment on whether the restatement of the part of Section 4654**
21 **continued in proposed Section 10615 would cause any substantive change in the meaning of**
22 **the provision.**

23 **§ 10620. Period of validity of tag**

24 10620. Wild pig tags are valid only during that portion of the current hunting
25 license year in which wild pigs may be taken or possessed in any area of the state.

26 **Comment.** Section 10620 continues former Fish and Game Code Section 4655 without
27 change.

28 **§ 10625. Fees for wild pig tag**

29 10625. (a) The fee for a wild pig tag shall be as follows:

30 (1) For a resident of the state, a base fee of fifteen dollars (\$15) per tag, adjusted
31 under Section 2780.

32 (2) For a nonresident, a base fee of fifty dollars (\$50) per tag, adjusted under
33 Section 2780.

34 (b) Fees from the sale of wild pig tags shall be deposited in the Big Game
35 Management Account established in Section 9400. These funds shall be available
36 for expenditure by the department as set forth in Section 9400. The department
37 shall maintain all internal accounting measures necessary to ensure that all
38 restrictions on these funds are met.

39 **Comment.** Subdivision (a) of Section 10625 restates the part of former Fish and Game Code
40 Section 4654 that relates to prerequisites for obtaining a wild pig tag, without substantive change.

41 Subdivision (b) continues former Fish and Game Code Section 4656 without change, except as
42 indicated below:

43 The following nonsubstantive changes are made:

- 44 • The words “Revenues received pursuant to this chapter” are replaced with “Fees from
45 the sale of wild pig tags.”

- Cross-references to former Fish and Game Code Sections 713 and 3953 are updated.

Staff Note. Subdivision (a) of proposed Section 10625 is intended to restate the part of existing Fish and Game Code Section 4654 that relates to fees for wild pig tags, to improve the clarity of that language, without changing its substantive effect. The remainder of Section 4654, relating to prerequisites for obtaining a wild pig tag, would be continued by proposed Section 10615.

Section 4654 reads as follows:

“4654. (a) Any resident of this state, 12 years of age or older, who possesses a valid hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifteen dollars (\$15), for each wild pig tag.

(b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifty dollars (\$50), for each wild pig tag.

(c) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.”

The staff invites comment on whether the restatement of the part of Section 4654 continued in subdivision (a) of proposed Section 10625 would cause any substantive change in the meaning of the provision.

Article 4. Population Management

§ 10650. Management plan

10650. (a) The department shall prepare a plan for the management of wild pigs. Under the plan, the status and trend of wild pig populations shall be determined and management units shall be designated within the state. The plan may establish pig management zones to address regional needs and opportunities. In preparing the plan, the department shall consider available, existing information and literature relative to wild pigs.

(b) The plan may include all of the following:

(1) The distribution and abundance of wild pigs, as described in **Section 3950**.

(2) A survey of range conditions.

(3) Recommendations for investigations and utilization of wild pigs.

(4) Encouraging mitigation of depredation by sport hunting pursuant to this chapter.

(5) Live trapping and relocation of wild pigs to areas suitable and accessible to mitigation of depredation, with the consent of the landowner and after prior consultation with adjacent landowners who, in the department’s opinion may be impacted, pursuant to this chapter.

Comment. Section 10650 continues former Fish and Game Code Section 4651 without change, except as indicated below:

The following nonsubstantive change is made:

- A cross-reference to former Fish and Game Code Section 3950 is updated.

1 **Staff Note.** The intended meaning of the words “pursuant to this chapter” at the end of
2 existing Fish and Game Code Section 4651 is unclear, as there are no provisions in the referenced
3 chapter that relate to the trapping or relocation of wild pigs.
4 **The staff invites comment on this issue.**

5 Article 5. Take to Protect Property

6 § 10660. “Damage”

7 10660. (a) For the purposes of this article, “damage” caused by a wild pig means
8 loss or harm resulting from injury to person or property.

9 (b) The department shall develop statewide guidelines to aid in determining the
10 damage caused by wild pigs. The guidelines shall consider various uses of the land
11 impacted by pigs.

12 **Comment.** Section 10660 continues former Fish and Game Code Section 4181.2 without
13 change, except as indicated below:

14 The following nonsubstantive changes are made:

- 15 • Subdivision designations are added.
- 16 • The words “relating to damage caused by wild pigs,” is deleted as superfluous.

17 § 10665. Protection of property

18 10665. (a) Notwithstanding **Section 4652**, a wild pig encountered in the act of
19 inflicting injury to, molesting, pursuing, worrying, or killing livestock, or
20 damaging or destroying, or threatening to immediately damage or destroy, land or
21 other property, including, but not limited to, rare, threatened, or endangered native
22 plants, wildlife, or aquatic species, may be taken immediately by any of the
23 following persons:

24 (1) The owner of the livestock, land, or property.

25 (2) The owner’s agent or employee.

26 (3) An agent or employee of any federal, state, county, or city entity when acting
27 in official capacity.

28 (b) The person taking the wild pig shall report the taking no later than the next
29 working day to the department and shall make the carcass available to the
30 department.

31 (c) Unless otherwise directed by the department and notwithstanding **Section**
32 **4657**, a person taking a wild pig pursuant to this section, or to whom the carcass of
33 a wild pig taken pursuant to this section is transferred pursuant to subdivision (e),
34 may possess the carcass of the wild pig, or may transfer the carcass to another
35 person or entity, if the transfer is made for no compensation. A person who
36 arranges a transfer pursuant to this subdivision shall be deemed to be in
37 compliance with **Section 4304**.

38 (d) A violation of this section is punishable pursuant to **Section 12000**. It is the
39 intent of the Legislature that nothing in this section shall be interpreted to
40 authorize a person to take wild pig pursuant to this section in violation of a state

1 statute or regulation, or a local zoning or other ordinance that is adopted pursuant
2 to other provisions of law and that restricts the discharge of a firearm.

3 (e) The department shall make a record of each report made pursuant to
4 subdivision (b), and may have an employee of the department investigate the
5 taking or cause the taking to be investigated. The person taking a wild pig shall
6 provide information as deemed necessary by the department. Upon completion of
7 an investigation, the investigator may, upon a finding that the requirements of this
8 section have been met with respect to a wild pig taken under subdivision (a), issue
9 a written statement to the person taking the wild pig, confirming that the
10 requirements of this section have been met.

11 (f) The department shall provide a person who reports taking wild pigs pursuant
12 to **subdivision (b)** with written information that sets forth available options for
13 wild pig control, including, but not limited to, depredation permits, allowing
14 periodic access to licensed hunters, and holding special hunts authorized pursuant
15 to **Section 4188**. The department may maintain and make available to these
16 persons lists of licensed hunters interested in wild pig hunting, and lists of
17 nonprofit organizations available to take possession of the carcasses of
18 depredating wild pigs.

19 **Comment.** Subdivisions (a) through (e) of Section 10665 continue the part of former Fish and
20 Game Code Section 4181.1(b), (c), and (e) applicable to wild pigs without change, except as
21 indicated below:

22 The following nonsubstantive changes are made:

- 23 • Subdivision and paragraph designations are added.
- 24 • Cross-references to former Fish and Game Code Sections 4181.1(c), 4304, 4652, 4657,
25 and 12000 are updated.
- 26 • The words “any wild pig that is encountered while” is replaced with “a wild pig
27 encountered.”
- 28 • A comma is added for clarity.
- 29 • The words “of the following persons:” are added for clarity.
- 30 • The words “his or her” are deleted as superfluous.
- 31 • The word “the” is replaced with “a.”
- 32 • The word “subdivision” is replaced with “section.”
- 33 • The words “The person in possession of the carcass shall make use of the carcass,
34 which may include an arrangement for transfer of the carcass to another person or
35 entity, such as a nonprofit organization, without compensation” are replaced with “, or
36 may transfer the carcass to another person or entity, if the transfer is made for no
37 compensation.”
- 38 • The words “The person who arranges this transfer” are replaced with “A person who
39 arranges a transfer pursuant to this subdivision.”
- 40 • The words “pigs” and “firearms” are singularized.
- 41 • A comma is added for clarity.
- 42 • The word “the” is replaced with “an.”
- 43 • The words “the investigation” are replaced with “an investigation.”
- 44 • The words “the particular [bear or] wild pig” are replaced with “a wild pig.”
- 45 • The word “person” is replaced with “person taking the wild pig.”
- 46 • The last sentence of former Fish and Game Code Section 4181.1(c) is deleted as
47 superfluous.

1 Subdivisions (f) continues the part of former Fish and Game Code Section 4181(c) applicable
2 to this section without change, except as indicated below:

3 The following nonsubstantive change is made:

- 4 • Cross-references to former Fish and Game Code Sections 4181.1(b) and 4188 are
5 updated.

6 **§ 10670. Depredation permit**

7 10670. (a) Except as provided in Section **4181.1**, an owner or tenant of land or
8 property that is being damaged or destroyed, or is in danger of being damaged or
9 destroyed, by wild pig, may apply to the department for a permit to kill the wild
10 pig causing or threatening the damage or destruction.

11 (b) Subject to the limitations in subdivisions (g) and (i), the department, upon
12 satisfactory evidence of actual or immediately threatened damage or destruction of
13 land or property, shall issue a revocable permit for the taking and disposition of
14 the responsible wild pig, under regulations adopted by the commission. The permit
15 shall include a statement of the penalties that may be imposed for a violation of
16 the permit conditions.

17 (c) Wild pig taken under a permit issued pursuant to subdivision (b) shall not be
18 sold or shipped from the premises on which they are taken, except pursuant to
19 instructions from the department.

20 (d) The department shall provide an applicant for a depredation permit with
21 written information that sets forth available options for wild pig control, including,
22 but not limited to, depredation permits, allowing periodic access to licensed
23 hunters, and holding special hunts authorized pursuant to **Section 4188**. The
24 department may maintain and make available to these persons lists of licensed
25 hunters interested in wild pig hunting, and lists of nonprofit organizations
26 available to take possession of the carcasses of depredating wild pigs.

27 (e) It is unlawful for any person to violate the terms of any permit issued
28 pursuant to this section.

29 **Comment.** Section 10670 restates the part of former Fish and Game Code Section 4181
30 applicable to wild pig without substantive change.

31 **Staff Note.** Proposed Section 10670 is intended to restate the part of existing Fish and Game
32 Code Section 4181 applicable to wild pig to improve the clarity of that language, without
33 changing its substantive effect. Existing Section 4181 reads as follows:

34 “4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is
35 being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver,
36 wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the
37 animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory
38 evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable
39 permit for the taking and disposition of the animals under regulations adopted by the commission.
40 The permit shall include a statement of the penalties that may be imposed for a violation of the
41 permit conditions. Animals so taken shall not be sold or shipped from the premises on which they
42 are taken except under instructions from the department. No iron-jawed or steel-jawed or any
43 type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any
44 type may be used to take any gray squirrel or wild turkey pursuant to this section. The department
45 shall designate the type of trap to be used to ensure the most humane method is used to trap gray

1 squirrels. The department may require trapped squirrels to be released in parks or other
2 nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under
3 this section.

4 (b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following
5 facts:

6 (1) Why the issuance of the permit was necessary.

7 (2) What efforts were made to solve the problem without killing the bears.

8 (3) What corrective actions should be implemented to prevent reoccurrence.

9 (c) With respect to wild pigs, the department shall provide an applicant for a depredation
10 permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of
11 Section 4181.1 with written information that sets forth available options for wild pig control,
12 including, but not limited to, depredation permits, allowing periodic access to licensed hunters,
13 and holding special hunts authorized pursuant to Section 4188. The department may maintain and
14 make available to these persons lists of licensed hunters interested in wild pig hunting and lists of
15 nonprofit organizations that are available to take possession of depredating wild pig carcasses.

16 (d) With respect to elk, the following procedures shall apply:

17 (1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all
18 of the following:

19 (A) Verify the actual or immediately threatened damage or destruction.

20 (B) Provide a written summary of corrective measures necessary to immediately alleviate the
21 problem.

22 (C) Determine the viability of the local herd, and determine the minimum population level
23 needed to maintain the herd.

24 (D) Ensure the permit will not reduce the local herd below the minimum.

25 (E) Work with affected landowners to develop measures to achieve long-term resolution, while
26 maintaining viability of the herd.

27 (2) After completing the statewide elk management plan pursuant to Section 3952, the
28 department shall use the information and methods contained in the plan to meet the requirements
29 of subparagraphs (C), (D), and (E) of paragraph (1).”

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

32 **§ 10675. Access by licensed hunters**

33 10675. (a) If a landowner or tenant applies for a permit under Section 10670 to
34 take wild pigs, the department shall inform the applicant about available options
35 for allowing access by licensed hunters, including, but not limited to, access
36 authorized pursuant to **Article 3 (commencing with Section 1570) of Chapter 5**
37 **of Division 2** to control wild pigs.

38 (b) The commission, in lieu of a permit described in Section 10670, and with the
39 consent of, or upon the request of, the landowner or tenant, may pursuant to
40 appropriate regulation authorize the issuance of permits to persons holding valid
41 hunting licenses to take wild pigs in sufficient numbers to stop the damage or
42 threatened damage. Before issuing permits to licensed hunters, the department
43 shall investigate and determine the number of permits necessary, the territory
44 involved, the dates of the proposed hunt, the manner of issuing the permits, and
45 the fee for the permit.

46 **Comment.** Section 10675 restates the part of former Fish and Game Code Section 4188
47 applicable to wild pigs without substantive change.

1 **Staff Note.** Proposed Section 10675 is intended to restate the part of existing Fish and Game
2 Code Section 4188 applicable to wild pigs to improve its clarity, without changing its substantive
3 effect. The existing provision reads as follows:

4 “4188. (a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or
5 wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or
6 tenant about available options for allowing access by licensed hunters, including, but not limited
7 to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of
8 Division 2 to control wild pigs, wild turkeys, and deer.

9 (b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of,
10 or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the
11 issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or
12 deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to
13 licensed hunters, the department shall investigate and determine the number of permits necessary,
14 the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the
15 fee for the permit.”

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

18 CHAPTER 8. RABBITS AND HARES

19 § 10680. Protection of crops

20 10680. (a) Notwithstanding any provision of this code to the contrary, an owner
21 or tenant of land, or any person authorized in writing by that owner or tenant, may
22 take cottontail or brush rabbits during any time of the year when damage to crops
23 or forage is being experienced on that land.

24 (b) Any person transporting a rabbit taken pursuant to subdivision (a) from the
25 land where the rabbit was taken, other than the owner or tenant of that land, shall
26 have in possession written authority from the owner or tenant of the land.

27 (c) Rabbits taken pursuant to this section shall not be sold.

28 **Comment.** Section 10680 continues former Fish and Game Code Section 4186 without
29 change, except as indicated below:

30 The following nonsubstantive changes are made:

- 31 • Subdivision designations are added.
- 32 • The words “Nothing in this code prohibits the owner” are replaced with
33 “Notwithstanding any provision of this code to the contrary, an owner.”
- 34 • The words “from taking” are replaced with “may take.”
- 35 • The words “Any person” are replaced with “Any person transporting a rabbit taken
36 pursuant to subdivision (a) from the land where the rabbit was taken.”
- 37 • The word “the” is replaced with “that.”
- 38 • The words “shall have in possession when transporting rabbits from the property,” are
39 replaced with “shall have in possession.”
- 40 • The words “tenant of land where those rabbits were taken” are replaced with “tenant of
41 the land.”
- 42 • The word “under” is replaced with “pursuant to.”

43 § 10685. Taking of jackrabbit injuring property

44 10685. (a) Except as provided in Section 4005, a black-tailed jackrabbit that is
45 found to be injuring growing crops or other property may be taken by the

1 following persons at any time or in any manner not prohibited by this code or
2 regulations adopted pursuant to this code:

3 (1) The owner or tenant of the premises.

4 (2) An employee or agent of the owner or tenant of the premises, who is in
5 immediate possession of written permission from the owner or tenant to take a
6 black-tailed jackrabbit described in this subdivision.

7 (3) An officer or employee of the Department of Food and Agriculture.

8 (4) A federal, county, or city officer or employee acting in official capacity
9 pursuant to provisions of the Food and Agricultural Code pertaining to pests, or
10 pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of
11 Division 4 of the Food and Agricultural Code.

12 (b) A person that takes a black-tailed jackrabbit pursuant to this section is
13 exempt from Section **3007**, except when providing trapping services for a fee.

14 (c) Raw fur from a black-tailed jackrabbit taken pursuant to this section shall not
15 be sold.

16 **Comment.** Section 10685 restates the part of former Fish and Game Code Section 4152
17 applicable to black-tailed jackrabbits without substantive change.

18 See also Section 8115 (inspection and removal of animals from traps).

19 **Staff Notes.** (1) Proposed Section 10685 is intended to restate the part of existing Fish and
20 Game Code Section 4152 applicable to black-tailed jackrabbits to improve the clarity of that
21 language, without changing its substantive effect. Existing Section 4152 reads as follows:

22 “4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits,
23 muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes*
24 *necator*), and red fox squirrels that are found to be injuring growing crops or other property may
25 be taken at any time or in any manner in accordance with this code and regulations adopted
26 pursuant to this code by the owner or tenant of the premises or employees and agents in
27 immediate possession of written permission from the owner or tenant thereof. They may also be
28 taken by officers or employees of the Department of Food and Agriculture or by federal, county,
29 or city officers or employees when acting in their official capacities pursuant to the Food and
30 Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021)
31 of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals
32 in accordance with this section are exempt from Section 3007, except when providing trapping
33 services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not
34 be sold.

35 (b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be
36 removed at least once daily. The inspection and removal shall be done by the person who sets the
37 trap or the owner of the land where the trap is set or an agent of either.”

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

40 (2) Existing Section 4152 refers to employees and agents in “immediate possession” of written
41 permission from the owner or tenant of premises where depredators are injuring property.

42 **The staff invites comment on whether or how the term “immediate possession” differs
43 from “possession,” and whether the more familiar term “possession” could be substituted
44 without substantively changing the meaning of the provision.**

CHAPTER 9. SQUIRRELS

§ 10690. Protection of property

10690. (a) Except as provided in Section 4005, a red fox squirrel that is found to be injuring growing crops or other property may be taken by the following persons at any time or in any manner not prohibited by this code or regulations adopted pursuant to this code:

(1) The owner or tenant of the premises.

(2) An employee or agent of the owner or tenant of the premises, who is in immediate possession of written permission from the owner or tenant to take a squirrel described in this subdivision.

(3) An officer or employee of the Department of Food and Agriculture.

(4) A federal, county, or city officer or employee acting in official capacity pursuant to provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(b) A person that takes a red fox squirrel pursuant to this section is exempt from Section 3007, except when providing trapping services for a fee.

(c) Raw fur from a red fox squirrel taken pursuant to this section shall not be sold.

Comment. Section 10690 restates the part of former Fish and Game Code Section 4152 applicable to red fox squirrels without substantive change.

See also Section 8115 (inspection and removal of animals from traps).

Staff Notes. (1) Proposed Section 10690 is intended to restate the part of existing Fish and Game Code Section 4152 applicable to red fox squirrels to improve the clarity of that language, without changing its substantive effect. Existing Section 4152 reads as follows:

“4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 3007, except when providing trapping services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.

(b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

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

(2) Existing Section 4152 refers to employees and agents in “immediate possession” of written permission from the owner or tenant of premises where depredators are injuring property.

1 **The staff invites comment on whether or how the term “immediate possession” differs**
2 **from “possession,” and whether the more familiar term “possession” could be substituted**
3 **without substantively changing the meaning of the provision.**

4 **§ 10695. Depredation permit**

5 10695. (a) Except as provided in Section **4181.1**, an owner or tenant of land or
6 property that is being damaged or destroyed, or is in danger of being damaged or
7 destroyed, by gray squirrels, may apply to the department for a permit to kill the
8 squirrels causing or threatening the damage or destruction.

9 (b) Subject to the limitations in subdivisions (g) and (i), the department, upon
10 satisfactory evidence of actual or immediately threatened damage or destruction of
11 land or property, shall issue a revocable permit for the taking and disposition of
12 the responsible squirrels, under regulations adopted by the commission. The
13 permit shall include a statement of the penalties that may be imposed for a
14 violation of the permit conditions.

15 (c) Gray squirrels taken under a permit issued pursuant to subdivision (b) shall
16 not be sold or shipped from the premises on which they are taken, except pursuant
17 to instructions from the department.

18 (d) No poison of any type may be used to take any gray squirrel pursuant to this
19 section.

20 (e) The department shall designate the type of trap to be used to trap gray
21 squirrels, ensuring that the designated trap is the most humane method available.
22 The department may require trapped squirrels to be released in parks or other
23 nonagricultural areas.

24 (f) It is unlawful for any person to violate the terms of any permit issued
25 pursuant to this section.

26 **Comment.** Section 10695 restates the part of former Fish and Game Code Section 4181
27 applicable to gray squirrels without substantive change.

28 **Staff Note.** Proposed Section 10695 is intended to restate the part of existing Fish and Game
29 Code Section 4181 applicable to gray squirrels to improve the clarity of that language, without
30 changing its substantive effect. Existing Section 4181 reads as follows:

31 “4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is
32 being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver,
33 wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the
34 animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory
35 evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable
36 permit for the taking and disposition of the animals under regulations adopted by the commission.
37 The permit shall include a statement of the penalties that may be imposed for a violation of the
38 permit conditions. Animals so taken shall not be sold or shipped from the premises on which they
39 are taken except under instructions from the department. No iron-jawed or steel-jawed or any
40 type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any
41 type may be used to take any gray squirrel or wild turkey pursuant to this section. The department
42 shall designate the type of trap to be used to ensure the most humane method is used to trap gray
43 squirrels. The department may require trapped squirrels to be released in parks or other
44 nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under
45 this section.

1 (b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following
2 facts:

- 3 (1) Why the issuance of the permit was necessary.
4 (2) What efforts were made to solve the problem without killing the bears.
5 (3) What corrective actions should be implemented to prevent reoccurrence.

6 (c) With respect to wild pigs, the department shall provide an applicant for a depredation
7 permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of
8 Section 4181.1 with written information that sets forth available options for wild pig control,
9 including, but not limited to, depredation permits, allowing periodic access to licensed hunters,
10 and holding special hunts authorized pursuant to Section 4188. The department may maintain and
11 make available to these persons lists of licensed hunters interested in wild pig hunting and lists of
12 nonprofit organizations that are available to take possession of depredating wild pig carcasses.

13 (d) With respect to elk, the following procedures shall apply:

14 (1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all
15 of the following:

16 (A) Verify the actual or immediately threatened damage or destruction.

17 (B) Provide a written summary of corrective measures necessary to immediately alleviate the
18 problem.

19 (C) Determine the viability of the local herd, and determine the minimum population level
20 needed to maintain the herd.

21 (D) Ensure the permit will not reduce the local herd below the minimum.

22 (E) Work with affected landowners to develop measures to achieve long-term resolution, while
23 maintaining viability of the herd.

24 (2) After completing the statewide elk management plan pursuant to Section 3952, the
25 department shall use the information and methods contained in the plan to meet the requirements
26 of subparagraphs (C), (D), and (E) of paragraph (1).”

27 **The staff invites comment on whether the restatement would cause any substantive change**
28 **in the meaning of the provision.**

29 TITLE 3. FUR BEARING MAMMALS

30 CHAPTER 1. TAKE GENERALLY

31 § 10700. Allowed methods of taking

32 10700. (a) A fur-bearing mammal may be taken only with a trap, firearm, bow
33 and arrow, dog, or poison.

34 (b) It is unlawful to use poison to take fur-bearing mammals without a permit
35 from the department. The department may issue the permit upon a written
36 application indicating the kind of poison desired to be used and the time and place
37 of use.

38 **Comment.** Subdivision (a) of Section 10700 continues former Fish and Game Code Section
39 4002 without change, except as indicated below:

40 The following nonsubstantive changes are made:

- 41 • The term “fur-bearing mammals” is singularized.
42 • The words “a firearm” are replaced with “firearm.”
43 • The words “poison under a proper permit, or with the use of dogs” are replaced with
44 “dog, or poison.”

1 Subdivision (b) continues former Fish and Game Code Section 4003 without change, except as
2 indicated below:

3 The following nonsubstantive change is made:

- 4 • The words “such a” are replaced with “the.”

5 CHAPTER 2. TAKE TO PROTECT PROPERTY

6 § 10725. Prohibited taking or possession

7 10725. (a) Except as provided by Section **4005**, fur-bearing mammals that are
8 injuring property may be taken at any time and in any manner not prohibited by
9 this code or regulations adopted pursuant to this code.

10 (b) Raw fur removed from a fur-bearing mammal that is taken pursuant to
11 subdivision (a) shall not be sold.

12 (c) A trap used to take a fur-bearing mammal pursuant to subdivision (a) shall be
13 inspected, and any animal found in a trap shall be removed, at least once daily.
14 The inspection and removal shall be done by the person who sets the trap, the
15 owner of the land where the trap is set, or an agent of either.

16 **Comment.** Section 10725 continues former Fish and Game Code Section 4180 without
17 change, except as indicated below:

18 The following nonsubstantive changes are made:

- 19 • A subdivision designation is added.
- 20 • The words “for in” are replaced with “by.”
- 21 • A cross-reference to former Fish and Game Code Section 4005 is updated.
- 22 • The words “in accordance with” are replaced with “not prohibited by.”
- 23 • The word “made” is replaced with “adopted.”
- 24 The words “furs, as defined in Section 4005, that are taken under this section,” are
25 replaced with “fur removed from a fur-bearing mammal that is taken pursuant to
26 subdivision (a).”
- 27 • The words “Traps used pursuant to this section” are replaced with “A trap used to take
28 a fur-bearing mammal pursuant to subdivision (a).”
- 29 • The words “all animals in the traps” are replaced with “any animal found in a trap.”
- 30 • The word “or,” is deleted as superfluous.
- 31 • Commas are added for clarity.

32 CHAPTER 3. RED FOXES

33 § 10730. Take for profit

34 10730. It is unlawful to take a red fox for a profitmaking purpose.

35 **Comment.** Section 10730 continues former Fish and Game Code Section 4012 without
36 change, except as indicated below:

37 The following nonsubstantive changes are made:

- 38 • The word “any” is replaced with “a.”
- 39 • The word “purposes” is singularized.

1 § 10735. Protection of property

2 10735. (a) Except as provided in Section 4005, a subspecies of red fox that is
3 not the native Sierra Nevada red fox (*Vulpes vulpes necator*) and that is found to
4 be injuring growing crops or other property may be taken by the following persons
5 at any time or in any manner not prohibited by this code or regulations adopted
6 pursuant to this code:

7 (1) The owner or tenant of the premises.

8 (2) An employee or agent of the owner or tenant of the premises, who is in
9 immediate possession of written permission from the owner or tenant to take a fox
10 described in this subdivision.

11 (3) An officer or employee of the Department of Food and Agriculture.

12 (4) A federal, county, or city officer or employee acting in official capacity
13 pursuant to provisions of the Food and Agricultural Code pertaining to pests, or
14 pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of
15 Division 4 of the Food and Agricultural Code.

16 (b) A person that takes a red fox pursuant to this section is exempt from Section
17 3007, except when providing trapping services for a fee.

18 (c) Raw fur from a red fox taken pursuant to this section shall not be sold.

19 **Comment.** Section 10735 restates the part of former Fish and Game Code Section 4152
20 applicable to certain subspecies of red foxes without substantive change.

21 See also Section 8115 (inspection and removal of animals from traps).

22 **Staff Notes.** (1) Proposed Section 10735 is intended to restate the part of existing Fish and
23 Game Code Section 4152 applicable to certain subspecies of red foxes to improve the clarity of
24 that language, without changing its substantive effect. Existing Section 4152 reads as follows:

25 “4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits,
26 muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes*
27 *necator*), and red fox squirrels that are found to be injuring growing crops or other property may
28 be taken at any time or in any manner in accordance with this code and regulations adopted
29 pursuant to this code by the owner or tenant of the premises or employees and agents in
30 immediate possession of written permission from the owner or tenant thereof. They may also be
31 taken by officers or employees of the Department of Food and Agriculture or by federal, county,
32 or city officers or employees when acting in their official capacities pursuant to the Food and
33 Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021)
34 of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals
35 in accordance with this section are exempt from Section 3007, except when providing trapping
36 services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not
37 be sold.

38 (b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be
39 removed at least once daily. The inspection and removal shall be done by the person who sets the
40 trap or the owner of the land where the trap is set or an agent of either.”

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

43 (2) Existing Section 4152 refers to employees and agents in “immediate possession” of written
44 permission from the owner or tenant of premises where depredators are injuring property.

45 **The staff invites comment on whether or how the term “immediate possession” differs**
46 **from “possession,” and whether the more familiar term “possession” could be substituted**
47 **without substantively changing the meaning of the provision.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

CHAPTER 4. MUSKRATS

§ 10740. Protection of property

10740. (a) Except as provided in Section **4005**, a muskrat that is found to be injuring growing crops or other property may be taken by the following persons at any time or in any manner not prohibited by this code or regulations adopted pursuant to this code:

(1) The owner or tenant of the premises.

(2) An employee or agent of the owner or tenant of the premises, who is in immediate possession of written permission from the owner or tenant to take muskrat described in this subdivision.

(3) An officer or employee of the Department of Food and Agriculture.

(4) A federal, county, or city officer or employee acting in official capacity pursuant to provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(b) A person that takes a muskrat pursuant to this section is exempt from Section **3007**, except when providing trapping services for a fee.

(c) Raw fur from a muskrat taken pursuant to this section shall not be sold.

Comment. Section 10740 restates the part of former Fish and Game Code Section 4152 applicable to muskrats without substantive change.

See also Section 8115 (inspection and removal of animals from traps).

Staff Notes. (1) Proposed Section 10740 is intended to restate the part of existing Fish and Game Code Section 4152 applicable to muskrats to improve the clarity of that language, without changing its substantive effect. Existing Section 4152 reads as follows:

“4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 3007, except when providing trapping services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.

(b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

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

(2) Existing Section 4152 refers to employees and agents in “immediate possession” of written permission from the owner or tenant of premises where depredators are injuring property.

1 (c) With respect to wild pigs, the department shall provide an applicant for a depredation
2 permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of
3 Section 4181.1 with written information that sets forth available options for wild pig control,
4 including, but not limited to, depredation permits, allowing periodic access to licensed hunters,
5 and holding special hunts authorized pursuant to Section 4188. The department may maintain and
6 make available to these persons lists of licensed hunters interested in wild pig hunting and lists of
7 nonprofit organizations that are available to take possession of depredating wild pig carcasses.

8 (d) With respect to elk, the following procedures shall apply:

9 (1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all
10 of the following:

11 (A) Verify the actual or immediately threatened damage or destruction.

12 (B) Provide a written summary of corrective measures necessary to immediately alleviate the
13 problem.

14 (C) Determine the viability of the local herd, and determine the minimum population level
15 needed to maintain the herd.

16 (D) Ensure the permit will not reduce the local herd below the minimum.

17 (E) Work with affected landowners to develop measures to achieve long-term resolution, while
18 maintaining viability of the herd.

19 (2) After completing the statewide elk management plan pursuant to Section 3952, the
20 department shall use the information and methods contained in the plan to meet the requirements
21 of subparagraphs (C), (D), and (E) of paragraph (1).”

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

24 CHAPTER 6. MISCELLANEOUS PROVISIONS

25 **§ 10755. Propagation of fur-bearing mammals**

26 10755. The provisions of Section 8000, Section 8100, Chapter 2 (commencing
27 with Section 8105) of Title 2 of Part 3, Chapter 1 (commencing with Section
28 8200) of Title 3 of Part 3, Chapter 2 (commencing with Section 8300) of Title 3,
29 of Part 3, Section 9000, Section 10700, and Section 10730 do not apply to, or
30 prohibit the propagation of, fur-bearing mammals that are confined in accordance
31 with regulations of the commission.

32 **Comment.** Section 10755 continues former Fish and Game Code Section 4010 without
33 change, except as indicated below:

34 The following nonsubstantive changes are made:

- 35 • A cross-reference to Chapter 2 (commencing with Section 4000) of Part 3 of Division 4
- 36 of the former Fish and Game Code is updated.
- 37 • The word “which” is replaced with “that.”
- 38 • The word “the” is deleted as superfluous.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

TITLE 4. NONGAME MAMMALS

CHAPTER 1. GENERAL PROVISIONS

§ 10775. Protection of property

10775. (a) Except as provided in Section 4005, a nongame mammal that is found to be injuring growing crops or other property may be taken by the following persons at any time or in any manner not prohibited by this code or regulations adopted pursuant to this code:

(1) The owner or tenant of the premises.

(2) An employee or agent of the owner or tenant of the premises, who is in immediate possession of written permission from the owner or tenant to take a nongame mammal described in this subdivision.

(3) An officer or employee of the Department of Food and Agriculture.

(4) A federal, county, or city officer or employee acting in official capacity pursuant to provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(b) A person that takes a nongame mammal pursuant to this section is exempt from Section 3007, except when providing trapping services for a fee.

(c) Raw fur from a nongame mammal taken pursuant to this section shall not be sold.

Comment. Section 10775 restates the part of former Fish and Game Code Section 4152 applicable to nongame mammals without substantive change.

See also Section 8115 (inspection and removal of animals from traps).

Staff Notes. (1) Proposed Section 10775 is intended to restate the part of existing Fish and Game Code Section 4152 applicable to nongame mammals to improve the clarity of that language, without changing its substantive effect. Existing Section 4152 reads as follows:

“4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 3007, except when providing trapping services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.

(b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

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

1 (2) Existing Section 4152 refers to employees and agents in “immediate possession” of written
2 permission from the owner or tenant of premises where depredators are injuring property.

3 **The staff invites comment on whether or how the term “immediate possession” differs**
4 **from “possession,” and whether the more familiar term “possession” could be substituted**
5 **without substantively changing the meaning of the provision.**

6 **§ 10780. Agreements relating to control of harmful nongame mammals**

7 10780. (a) The department may enter into cooperative agreements with any
8 agency of the state or the United States for the purpose of controlling harmful
9 nongame mammals.

10 (b) The department may enter into cooperative contracts with the United States
11 Fish and Wildlife Service in the Department of the Interior for the purpose of
12 controlling or eradicating any nongame mammal, and may expend any money
13 made available to the department for that purpose.

14 **Comment.** Subdivision (a) of Section 10780 continues the first sentence of former Fish and
15 Game Code Section 4153 without change.

16 Subdivision (b) continues former Fish and Game Code Section 4154 without change, except as
17 indicated below:

18 The following nonsubstantive changes are made:

- 19 • The words “in relation to the control of nongame mammals” are replaced with “for the
20 purpose of controlling or eradicating any nongame mammal.”
- 21 • The words “for that purpose” are deleted as superfluous.
- 22 • The words “expenditure for control or eradication of nongame mammals” are replaced
23 with “that purpose.”

24 CHAPTER 2. BOBCATS

25 Article 1. General Provisions

26 **§ 10800. Definition of “pursue”**

27 10800. As used in this chapter, the term “pursue” has the same meaning as
28 defined in Section 9100.

29 **Comment.** Section 10800 continues the parts of former Fish and Game Code Sections 3960,
30 3960.2, 3960.4, and 3960.6 applicable to the word “pursue” without change, except as indicated
31 below:

32 The following nonsubstantive change is made:

- 33 • A cross-reference to former Fish and Game Code 3960 is updated.

34 Article 2. Take Generally

35 **§ 10805. Trapping on private land**

36 10805. (a) Notwithstanding **Section 2016** or any other provisions of this code,
37 on and after January 1, 2014, it shall be unlawful to trap any bobcat, or attempt to
38 do so, on any private land not belonging to the trapper without the express written
39 consent of the owner of that property.

1 (b) The placing or possession of any trap or the possession of a bobcat on any
2 land is prima facie evidence of a violation of this subdivision.

3 **Comment.** Section 10805 continues former Fish and Game Code Section 4155(d) without
4 change, except as indicated below:

5 The following nonsubstantive changes are made:

- 6 • Subdivision designations are added.
- 7 • A cross-reference to former Fish and Game Code Section 2016 is updated.
- 8 • References to a “part” of a bobcat are deleted as superfluous. See Section 95 (reference
9 to animal generally includes part of animal).

10 **§ 10815. Joshua Tree National Park**

11 10815. Beginning January 1, 2014, it shall be unlawful to trap any bobcat, or
12 attempt to do so, or to sell or export any bobcat taken in the area surrounding
13 Joshua Tree National Park, defined as follows: East and South of State Highway
14 62 from the intersection of Interstate 10 to the intersection of State Highway 177;
15 West of State Highway 177 from the intersection of State Highway 62 to the
16 intersection with Interstate 10; North of Interstate 10 from State Highway 177 to
17 State Highway 62.

18 **Comment.** Section 10815 continues former Fish and Game Code Section 4155(a) without
19 change, except as indicated below:

20 The following nonsubstantive change is made:

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

23 **§ 10820. Parks, preserves, and conservancies**

24 10820. (a) Through the commission’s next regularly scheduled mammal
25 hunting and trapping rulemaking process occurring after January 1, 2014, the
26 commission shall amend its regulations to prohibit the trapping of bobcats
27 adjacent to the boundaries of each national or state park and national monument or
28 wildlife refuge in which bobcat trapping is prohibited.

29 (b) Commencing January 1, 2016, the commission shall consider whether to
30 prohibit bobcat trapping within, and adjacent to, preserves, state conservancies,
31 and any additional public or private conservation areas identified to the
32 commission by the public as warranting protection. The commission, as necessary,
33 shall amend its regulations through its next subsequently scheduled mammal
34 hunting and trapping rulemaking process to prohibit bobcat trapping in any area
35 determined by the commission to warrant protection.

36 (c) The commission shall delineate the boundaries of an area in which bobcat
37 trapping is prohibited pursuant to subdivisions (a) or (b) using readily identifiable
38 features, such as highways or other major roads, such as those delineated for
39 Joshua Tree National Park in Section 10815.

40 (d) The prohibition on the trapping of bobcats in the areas designated pursuant
41 to Section 10815 and this section shall not apply to any of the following:

1 (1) The taking of a bobcat by employees of the department acting in an official
2 capacity.

3 (2) The taking of a bobcat in accordance with the conditions of a scientific,
4 educational, or propagation permit pursuant to Section **1002** by the holder of that
5 permit.

6 (3) The lawful taking of a bobcat found to be injuring crops or other property
7 pursuant to **Section 4152** or other provisions of this code or regulations adopted
8 pursuant to this code.

9 **Comment.** Section 10820 continues former Fish and Game Code Section 4155(b)-(c) without
10 change, except as indicated below:

11 The following nonsubstantive changes are made:

- 12 • Subdivision and paragraph designations are added.
- 13 • Cross-references to former Fish and Game Code Sections 1002, 4152, 4155(a),
14 4155(b), 4155(b)(1), and 4155(b)(2) are updated.
- 15 • The words “any of the following:” are added for clarity.
- 16 • The word “any” is replaced with “a.”
- 17 • The words “a taking” are replaced with “The taking of a bobcat.”
- 18 • The word “bobcats” is singularized.

19 **§ 10830. Trapping fees**

20 10830. Consistent with the requirements of **subdivision (c) of Section 4006**, the
21 commission shall set trapping license fees and associated fees, including, but not
22 limited to, shipping tags required pursuant to Section 479 of Chapter 6 of
23 Subdivision 2 of Division 1 of Title 14 of the California Code of Regulations, for
24 the 2014–15 season, and any subsequent seasons in which bobcat trapping is
25 allowed, at the levels necessary to fully recover all reasonable administrative and
26 implementation costs of the department and the commission associated with the
27 trapping of bobcats in the state, including, but not limited to, enforcement costs.

28 **Comment.** Section 10830 continues former Fish and Game Code Section 4155(e) without
29 change, except as indicated below:

30 The following nonsubstantive change is made:

- 31 • A cross-reference to former Fish and Game Code Section 4006(c) is updated.

32 **§ 10835. Effect of article**

33 10835. This article does not limit the ability of the department or the
34 commission to impose additional requirements, restrictions, or prohibitions related
35 to the taking of bobcats, including a complete prohibition on the trapping of
36 bobcats pursuant to this code.

37 **Comment.** Section 10835 continues former Fish and Game Code Section 4155(f) without
38 change, except as indicated below:

39 The following nonsubstantive change is made:

- 40 • A cross-reference to former Fish and Game Code Section 4155 is updated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Article 3. Pursuit to Protect Property

§ 10840. Pursuit to protect livestock or crops

10840. Notwithstanding Section 9110, dogs that are guarding or protecting livestock or crops on property owned, leased, or rented by the owner of the dogs may be used to pursue a bobcat, if the dogs are maintained with, and remain in reasonable proximity to, the livestock or crops being guarded or protected.

Comment. Section 10840 continues the part of subdivision (b) of former Fish and Game Code Section 3960.6 applicable to bobcats without change, except as indicated below:

The following nonsubstantive changes are made:

- A cross-reference to Section 3960 is updated.
- The phrase “the pursuit of bears or bobcats by dogs that are guarding or protecting livestock or crops on property owned, leased, or rented by the owner of the dogs, is not prohibited” are replaced with “dogs that are guarding or protecting livestock or crops on property owned, leased, or rented by the owner of the dogs may be used to pursue a bobcat.”

§ 10845. Depredation permit

(a) Notwithstanding Section 9110, three or fewer dogs may be used to pursue a bobcat pursuant to a depredation permit issued by the department, if all of the following conditions are met:

(1) The applicant demonstrates, in writing, that nonlethal and avoidance measures were undertaken prior to requesting the depredation permit.

(2) The applicant demonstrates, in writing, the specific need for the use of dogs in carrying out the depredation permit.

(3) The depredation permit authorizing the use of dogs is valid for the take of one bobcat.

(4) The depredation permit authorizing the use of dogs is valid for a period not to exceed 20 consecutive days.

(5) The depredation permit specifies the name and address of any dog handler who will be utilized in the pursuit or taking.

(6) The dog handler has the depredation permit in his or her possession at all times during the pursuit or taking.

(7) The dog handler does not pursue a bobcat more than one mile off the property on which the depredation activity occurred.

(b) No holder of a depredation permit may solicit or receive compensation from any person in exchange for carrying out the terms of the permit. For the purpose of this subdivision, “compensation” means remuneration paid in money, property, or anything else of value.

(c) The holder of a depredation permit, within 30 days of its issuance, shall report to the department detailing the use of the permit and the results of any pursuits, including information about bobcat pursued and whether the bobcat was or was not harmed, but not killed.

Comment. Section 10800 continues the part of former Fish and Game Code Section 3960.2(b), (d), and (e) applicable to bobcats without change, except as indicated below:

1 The following nonsubstantive changes are made:

- 2 • The words “not more than three dogs” are replaced with “three dogs or fewer.”
- 3 • The words “For these purposes” are replaced with “For the purpose of this
- 4 subdivision.”

5 Article 3. Pursuit for Scientific Purposes

6 **§ 10850. Pursuit in furtherance of scientific research**

7 10850. (a) Notwithstanding Section 9110, the department may authorize
8 qualified individuals, educational institutions, governmental agencies, or
9 nongovernmental organizations to use dogs to pursue bobcats for the purpose of
10 scientific research, provided that the research project is designed to do all of the
11 following:

12 (1) Contribute to knowledge of natural wildlife ecosystems.

13 (2) Follow best practices and minimize disruptions in the lives and movements
14 of bobcats and other wildlife, as well as impacts to the habitat while maintaining
15 the applicant’s objectives.

16 (3) Directly or indirectly support the sustainability and survival of bobcat
17 populations and healthy ecosystems.

18 (4) Exclude the intentional injury or killing of any bobcat.

19 (5) Exclude the intentional relocation of any bobcat other than to areas suitable
20 to them in the state. Any relocation shall comply with the requirements of **Section**
21 **4190**.

22 (b) Any research project authorized pursuant to subdivision (a) shall be
23 undertaken pursuant to a memorandum of understanding between the department
24 and the authorized research entity that addresses all of the following:

25 (1) Trapping and anesthetizing of the animals pursued, collection of diagnostic
26 samples, attaching or surgically implanting monitoring or recognition devices or
27 markings, and providing veterinary care or euthanasia, as required, for the health,
28 safety, and humane treatment of the animals.

29 (2) Qualifications of onsite field supervisors necessary for carrying out
30 authorized research procedures.

31 (3) Immediate reporting of any incidental mortality or injury to a bobcat as a
32 result of authorized research activities. Reports of any incidental mortality or
33 injury to a bobcat shall be made available to the public upon request.

34 (4) Filing of annual and final progress reports of research involving pursuit by
35 dogs. Annual and final progress reports shall be made available to the public upon
36 request.

37 (c) The department shall provide notice to the public of any bobcat research
38 project authorized pursuant to subdivision (a) at least 30 days prior to its initiation,
39 and, upon request, shall make available to the public copies of the memorandum
40 of understanding between the department and the authorized research entity
41 required pursuant to subdivision (b).

1 **Comment.** Section 10850 continues the part of former Fish and Game Code Section
2 3960.4(b)-(d) applicable to bobcats without change, except as indicated below:

3 The following nonsubstantive changes are made:

- 4 • The words “Not include” are replaced with “Exclude.”
- 5 • Cross-references to former Fish and Game Code Sections 3960, 3960.4(b), 3960.4(c),
6 and 4190 are updated.

7  **Staff Note.** Existing Fish and Game Code Section 3960.4 authorizes the Department to use
8 dogs to pursue bears *or* bobcats for scientific research, provided the research project meets certain
9 conditions. Among those conditions are safeguards that generally protect against harm to any
10 “bear *or* bobcat.” See Section 3960.4(b)(3), (4), (5) (which would be continued by proposed
11 Section 10850(a)(3), (4), and (5)).

12 Proposed Section 10850 would continue the provisions of Section 3960.4 that relate only to the
13 pursuit and protection of bobcats, and all references to bears have therefore been deleted from the
14 proposed section. (The provisions of Section 3960.4 that relate to the pursuit and protection of
15 bears are continued elsewhere.)

16 **The staff invites comment on whether any of the deletions of the references to bears in
17 this section would cause any substantive change in the meaning of any provision in Section
18 3960.4.**

19 CHAPTER 3. MARINE MAMMALS

20 § 10900. Taking

21 10900. (a) It is unlawful to take any marine mammal except in accordance with
22 provisions of the following:

23 (1) The Marine Mammal Protection Act of 1972 (Chapter 31 (commencing with
24 Section 1361) of Title 16 of the United States Code).

25 (2) The provisions of Title 50 of the Code of Federal Regulations.

26 (3) Any regulations adopted pursuant to subdivision (b).

27 (b) If federal laws or regulations permit the state to assume jurisdiction over
28 marine mammals, the commission may adopt regulations governing marine
29 mammals and their taking.

30 (c) For purposes of this chapter, “marine mammals” means sea otters, whales,
31 dolphins, porpoises, seals, and sea lions.

32 (d) Notwithstanding **Section 12002 or 12008**, the punishment for any violation
33 of **Section 4500 or 4700** is a fine of not more than twenty-five thousand dollars
34 (\$25,000) for each unlawful taking, imprisonment in a county jail for the period
35 prescribed in **Section 12002 or 12008**, or both the fine and imprisonment.

36 **Comment.** Subdivisions (a)-(c) of Section 10900 restates former Fish and Game Code Section
37 4500 without substantive change.

38 Subdivision (d) continues the part of former Fish and Game Code Section 12003.2 applicable
39 to former Fish and Game Code Section 4500 without change, except as indicated below:

40 The following nonsubstantive changes are made:

- 41 • Cross-references to former Fish and Game Code Sections 4500, 4700, 12002, and
42 12008 are updated.

1 **☞ Staff Notes.** (1) Subdivisions (a)-(c) of proposed Section 10900 are intended to restate
2 existing Fish and Game Code Section 4500 to improve the clarity of that section, without
3 changing its substantive effect. The existing provision reads as follows:

4 “4500. (a) It is unlawful to take any marine mammal except in accordance with provisions of
5 the Marine Mammal Protection Act of 1972 (Chapter 31 (commencing with Section 1361) of
6 Title 16 of the United States Code) or provisions of Title 50 of the Code of Federal Regulations,
7 or pursuant to subdivision (b) of this section.

8 (b) At such time as federal laws or regulations permit the state to assume jurisdiction over
9 marine mammals, the commission may adopt regulations governing marine mammals and the
10 taking thereof.

11 (c) For purposes of this chapter, “marine mammals” means sea otters, whales, dolphins,
12 porpoises, seals, and sea lions.”

13 **The staff invites comment on whether the restatement of Section 4500 would cause any**
14 **substantive change in the meaning of the provision.**

15 (2) Existing Fish and Game Code Section 4500(c) defines “marine mammals” only for
16 purposes of the chapter in which Section 4500 appears. However, the term “marine mammal” is
17 used elsewhere in the existing Fish and Game Code, with no corresponding definition. See
18 existing Sections 3002, 7712, 8609, 8664.5, 8664.7, 8664.8, 15008.

19 **The staff invites comment on whether this definition be made applicable to the code**
20 **generally, and included with the general definitions in the first division of the proposed law.**

21 **§ 10905. Regulation of cat litter**

22 10905. (a) The Legislature finds and declares that several types of nonpoint
23 source pollution are harmful to sea otters, and that scientific studies point to links
24 between cat feces, the pathogen T-gondii, and sea otter mortality. The Legislature
25 further finds and declares that efforts to reduce the flushing of cat litter and cat
26 feces are steps toward better water quality in the sea otters’ natural habitat.

27 (b) Any cat litter offered for sale in this state shall contain one of the following
28 statements:

29 (1) “Encouraging your cat to use an indoor litter box, or properly disposing of
30 outdoor cat feces, is beneficial to overall water quality. Please do not flush cat
31 litter in toilets or dispose of it outdoors in gutters or storm drains.”

32 (2) A general statement that encourages the disposal of cat feces in trash and
33 discourages flushing cat feces in toilets or disposing of them in drains.

34 **Comment.** Section 10905 continues former Fish and Game Code Section 4501 without
35 change.”

36 **☞ Staff Note.** A Southern sea otter (*Enhydra lutris nereis*) is a “fully protected mammal.” See
37 existing Fish and Game Code Section 4700(b).

38 **The staff invites comment on whether proposed Section 10905 should be included in this**
39 **title, governing nongame mammals, or in the next title in this part, governing fully**
40 **protected mammals.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

CHAPTER 4. RODENTS

§ 11000. “Wild rodent”

11000. “Wild rodent” as used in this chapter means a wild ground squirrel, chipmunk, rat, mouse or any other member of the order Rodentia native to California except muskrat or beaver.

Comment. Section 11000 continues former Fish and Game Code Section 2575 without change, except as indicated below:

The following nonsubstantive changes are made:

- The words “rodents,” “squirrels,” “chipmunks,” “rats,” “mice,” “member,” “muskrat,” and “beaver” are singularized.

§ 11005. Prohibitions

11005. It is unlawful to knowingly capture for sale, transport for sale or sell a wild rodent, except as provided in **Article 1.5 (commencing with Section 1000) of Chapter 3 of Division 2.**

Comment. Section 11005 former Fish and Game Code Section 2576 without change, except as indicated below:

The following nonsubstantive changes are made:

- The word “rodents” is singularized.
- A cross-reference to Article 1.5 (commencing with Section 1000) of Chapter 3 of Division 2 of the former Fish and Game Code is updated.

CHAPTER 5. BURROS

§ 11050. Prohibitions

11050. (a) It is unlawful to kill, wound, capture, or have in possession any undomesticated burro, except as provided in Section 53074.5 of the Government Code.

(b) As used in this section, “undomesticated burro” means a wild burro or a burro that has not been tamed or domesticated for a period of three years after its capture. The fact that a burro was killed, wounded, or captured on publicly owned land, or on land owned by a person other than the person who killed, wounded, or captured the burro is prima facie evidence that the burro was an undomesticated burro at the time it was killed, wounded, or captured.

(c) Neither the commission nor any other department or agency has any power to modify the provisions of this section by any order, rule, or regulation.

(d) The punishment for a violation of this section is a fine of not more than two thousand dollars (\$2,000), imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

Comment. Subdivisions (a) through (c) of Section 11050 continues former Fish and Game Code Section 4600 without change, except as indicated below:

The following nonsubstantive change is made:

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

1 Subdivision (d) continues the part of former Fish and Game Code Section 12002 applicable to
2 former Fish and Game Code Section 4600 without change.

3 **☞ Staff Note.** This provision is included in a statutory part governing mammals for ease of
4 reference. The staff is aware that a burro is not a mammal as that term is defined in existing Fish
5 and Game Code Section 54.

6 TITLE 5. SPECIALLY PROTECTED MAMMALS

7 CHAPTER 1. MOUNTAIN LIONS

8 **☞ Staff Note.** Existing Fish and Game Code Sections 4800-4801 and 4802-4809 (which would
9 be continued in this chapter in proposed Sections 11100-11150), were added in 1990 pursuant to
10 an initiative statute, Proposition 117.

11 Under Article 2, Section 10(c) of the California Constitution, an initiative statute may be
12 amended or repealed by the Legislature only when expressly permitted by the text of the initiative
13 statute. The text of Proposition 117 provides in pertinent part that any section added to the Fish
14 and Game Code by the proposition may be subsequently amended by the Legislature “only by a
15 statute approved by a vote of four-fifths of the members of both houses of the Legislature,” and
16 that any such amendment “shall be consistent with, and further the purposes of,” the proposition.
17 The text does not address a subsequent repeal of any section added by the proposition.

18 However, courts have held that, for the provisions of Article 2, Section 10(c), a legislative
19 enactment only amends an initiative statute when it “prohibits what the initiative authorizes, or
20 authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48 Cal. 4th 564,
21 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010). (The staff has located no authority directly
22 addressing whether this principle also applies to a repeal of an initiative statute.)

23 Based on interpretative case law, the office of Legislative Counsel has informally expressed to
24 staff its view that the repeal and recodification of an initiative statute in a single enactment is not
25 precluded by Article 2, Section 10(c), if the recodification does not substantively change the
26 meaning of the repealed initiative statute.

27 **The staff invites comment on whether the proposed recodification of the initiative**
28 **provisions would substantively change the meaning of those provisions, or would for some**
29 **other reason violate Article 2, Section 10(c) of the California Constitution.**

30 Article 1. General Provisions

31 **§ 11100. Prohibition against superseding regulation**

32 11100. Section 675 does not apply to this chapter. Neither the commission nor
33 the department shall adopt any regulation that conflicts with or supersedes any of
34 the provisions of this chapter.

35 **Comment.** Section 11100 continues former Fish and Game Code Section 4800(d) without
36 change, except as indicated below:

37 The following nonsubstantive change is made:

- 38 • A cross-reference to former Fish and Game Code Section 219 is updated.

39 **§ 11105. “Agent”**

40 11105. As used in this chapter, “agent” means any of the following:

- 41 (a) The agent or employee of the owner of the damaged or destroyed property.

1 (b) Any county or city predator control officer.

2 (c) Any employee of the Animal Damage Control Section of the United States
3 Department of Agriculture.

4 (d) Any departmental personnel.

5 (e) Any authorized or permitted houndsman registered with the department as
6 possessing the requisite experience, and having no prior conviction for violation of
7 any provision of this code or regulation adopted pursuant to this code. For
8 purposes of this paragraph, a conviction includes a plea of nolo contendere.

9 **Comment.** Section 11105 continues former Fish and Game Code Section 4808 without
10 change, except as indicated below:

11 The following nonsubstantive changes are made:

- 12 • Subdivision designations are added.
- 13 • The word “the” is replaced with “any of the following:.”
- 14 • The words “no prior conviction of any provision” are replaced with “no prior
15 conviction for violation of any provision.”

16 The word “A” is replaced with “For purposes of this paragraph, a conviction includes a.”

17 **Staff Note. The staff invites comment on a gender-neutral term that could be substituted**
18 **in this provision for the word “houndsman.”**

19 Article 2. Special Protections

20 § 11110. Prohibitions on take and possession

21 11110. (a) The mountain lion (genus Puma) is a specially protected mammal
22 under the laws of this state.

23 (b)(1) It is unlawful to take, injure, possess, transport, import, or sell a mountain
24 lion or any product of a mountain lion, except as specifically provided in this
25 chapter or in **Chapter 2 (commencing with Section 2116) of Division 3.**

26 (2) This chapter does not prohibit the sale or possession of a mountain lion or
27 product of a mountain lion, when the owner can demonstrate that the mountain
28 lion, or product of a mountain lion, was in the person’s possession on June 6,
29 1990.

30 (3) This chapter does not prohibit the possession of a mountain lion carcass or
31 any product of a mountain lion carcass, if all of the following requirements are
32 met:

33 (A) The carcass or carcass product is prepared or being prepared for display,
34 exhibition, or storage, for a bona fide scientific or educational purpose, at a
35 nonprofit museum or government-owned facility generally open to the public or at
36 an educational institution, including a public or private postsecondary institution.

37 (B) The mountain lion was taken in California consistent with the requirements
38 of this chapter and any other applicable law.

39 (C) The department has authorized the possession of the carcass or carcass
40 product for the purposes of this paragraph.

41 (c) Any violation of this section is a misdemeanor punishable by imprisonment
42 in the county jail for not more than one year, or a fine of not more than ten

1 thousand dollars (\$10,000), or by both that fine and imprisonment. An individual
2 is not guilty of a violation of this section if it is demonstrated that, in taking or
3 injuring a mountain lion, the individual was acting in self-defense or in defense of
4 others.

5 **Comment.** Section 11110 continues former Fish and Game Code Section 4800(a)-(c) without
6 change, except as indicated below:

7 The following nonsubstantive changes are made:

- 8 • References to a “part” of a mountain lion is deleted as superfluous. See Section 95
9 (reference to animal generally includes part of animal).
- 10 • The word “any” is replaced with “a.”
- 11 • The word “thereof” is replaced with “of a mountain lion.”
- 12 • A cross-reference to Chapter 2 (commencing with Section 2116) of Division 3 of the
13 former Fish and Game Code is updated.

14 Article 3. Public Safety and Protection of Property

15 § 11115. Removal by department

16 11115. The department may remove or take any mountain lion, or authorize an
17 appropriate local agency with public safety responsibility to remove or take any
18 mountain lion, that is perceived to be an imminent threat to public health or safety
19 or that is perceived by the department to be an imminent threat to the survival of
20 any threatened, endangered, candidate, or fully protected sheep species.

21 **Comment.** Section 11115 continues former Fish and Game Code Section 4801 without
22 change.

23 § 11120. Permit to protect property

24 11120. Any person, or the employee or agent of a person, whose livestock or
25 other property is being or has been injured, damaged, or destroyed by a mountain
26 lion may report that fact to the department and request a permit to take the
27 mountain lion.

28 **Comment.** Section 11120 continues former Fish and Game Code Section 4802 without
29 change.

30 § 11125. Confirmation of depredation

31 11125. Upon receipt of a report pursuant to Section 11120, the department, or
32 any animal damage control officer specifically authorized by the department to
33 carry out this responsibility, shall immediately take the action necessary to
34 confirm that there has been depredation by a mountain lion as reported. The
35 confirmation process shall be completed as quickly as possible, but in no event
36 more than 48 hours after receiving the report. If satisfied that there has been
37 depredation by a mountain lion as reported, the department shall promptly issue a
38 permit to take the depredating mountain lion.

39 **Comment.** Section 11125 continues former Fish and Game Code Section 4803 without
40 change, except as indicated below:

41 The following nonsubstantive change is made:

- 42 • A cross-reference to former Fish and Game Code Section 4802 is updated.

1 **§ 11130. Permit conditions**

2 11130. In order to ensure that only the depredating mountain lion will be taken,
3 the department shall issue the permit pursuant to Section 11125 with the following
4 conditions attached:

5 (a) The permit shall expire 10 days after issuance.

6 (b) The permit shall authorize the holder to begin pursuit not more than one mile
7 from the depredation site.

8 (c) The permit shall limit the pursuit of the depredating mountain lion to within
9 a 10-mile radius from the location of the reported damage or destruction.

10 **Comment.** Section 11130 continues former Fish and Game Code Section 4804 without
11 change, except as indicated below:

12 The following nonsubstantive change is made:

- 13 • A cross-reference to former Fish and Game Code Section 4803 is updated.

14 **§ 11135. Expedited permit**

15 11135. Whenever immediate authorization will materially assist in the pursuit of
16 the particular mountain lion believed to be responsible for the depredation
17 reported pursuant to Section 11120, the department or the animal damage control
18 officer may orally authorize the pursuit and taking of the depredating mountain
19 lion, and the department shall issue a written permit for the period previously
20 authorized as soon as practicable after the oral authorization.

21 **Comment.** Section 10335 continues former Fish and Game Code Section 4805 without
22 change, except as indicated below:

23 The following nonsubstantive change is made:

- 24 • A cross-reference to former Fish and Game Code Section 4802 is updated.

25 **§ 11140. Report to department**

26 11140. (a) Any person issued a permit pursuant to Section 11125 or 11135 shall
27 report the capturing, injuring, or killing of any mountain lion to an office of the
28 department by telephone within 24 hours, or, if telephoning is not practicable,
29 shall submit a report in writing within five days after the capturing, injuring, or
30 killing of the mountain lion.

31 (b) At the time of making the report of the capturing, injuring, or killing, the
32 holder of the permit shall make arrangements to turn over the mountain lion or the
33 entire carcass of the mountain lion that has been recovered to a representative of
34 the department, and shall do so in a timely manner.

35 **Comment.** Section 11140 continues former Fish and Game Code Section 4806 without
36 change, except as indicated below:

37 The following nonsubstantive changes are made:

- 38 • Subdivision designations are added.
- 39 • Cross-references to former Fish and Game Code Sections 4803 and 4805 are updated.
- 40 • The words “by telephone within 24 hours” is relocated in the sentence in which it
41 appears.
- 42 • The words “shall submit a report” are added for clarity.
- 43 The word “which” is replaced with “that.”

1 **§ 11145. Immediate taking of encountered depredator**

2 11145. (a) Any mountain lion that is encountered while in the act of pursuing,
3 inflicting injury to, or killing livestock, or domestic animals, may be taken
4 immediately by the owner of the property or the owner’s employee or agent. The
5 taking shall be reported within 72 hours to the department. The department shall
6 investigate the depredation, and, if the mountain lion was captured, injured, or
7 killed, the mountain lion or the entire carcass of the mountain lion that has been
8 recovered shall be turned over to the department.

9 (b) Upon satisfactorily completing the investigation and receiving the mountain
10 lion or the carcass, if recovered, the department shall issue a permit confirming
11 that the requirements of this section have been met with respect to the particular
12 mountain lion taken under these circumstances.

13 (c) The department shall undertake a complete necropsy on any returned
14 mountain lion carcass and report the findings to the commission. The commission
15 shall compile the reported findings and prepare an annual written report that shall
16 be submitted to the Legislature not later than the January 15 next following the
17 year in which the mountain lion was taken.

18 **Comment.** Section 11145 continues former Fish and Game Code Section 4807 without
19 change, except as indicated below:

20 The following nonsubstantive changes are made:

- 21 • A subdivision designation is added.
- 22 • The word “which” is replaced with “that.”

23 **§ 11150. Method of taking**

24 11150. A mountain lion authorized to be taken pursuant to this chapter shall be
25 taken by the most effective means available to take the mountain lion causing the
26 damage or destruction, except that no mountain lion shall be taken by means of
27 poison, leg-hold or metal-jawed traps, and snares.

28 **Comment.** Section 11150 continues former Fish and Game Code Section 4809 without
29 change, except as indicated below:

30 The following nonsubstantive change is made:

- 31 • The term “Mountain lions” is singularized.

32 **§ 11155. Use of nonlethal procedures**

33 11155. (a) Unless authorized in this chapter, nonlethal procedures shall be used
34 when removing or taking any mountain lion that has not been designated as an
35 imminent threat to public health or safety.

36 (b) For purposes of this chapter, “imminent threat to public health or safety”
37 means a situation where a mountain lion exhibits one or more aggressive
38 behaviors directed toward a person that is not reasonably believed to be due to the
39 presence of responders.

40 (c) For purposes of this chapter, “nonlethal procedures” means procedures that
41 may include, but are not limited to, capturing, pursuing, anesthetizing, temporarily
42 possessing, temporarily injuring, marking, attaching to or surgically implanting

1 monitoring or recognition devices, providing veterinary care, transporting, hazing,
2 rehabilitating, releasing, or taking no action.

3 (d) The department may, as the department determines is necessary to protect
4 mountain lions or the public, authorize qualified individuals, educational
5 institutions, governmental agencies, or nongovernmental organizations to
6 implement nonlethal procedures on a mountain lion in accordance with
7 subdivision (a).

8 **Comment.** Section 11155 continues former Fish and Game Code Section 4801.5 without
9 change.”

10 Article 4. Take for Scientific Purposes

11 § 11160. Research

12 11160. (a) As used in this section:

13 (1) “Authorized research project” means a research project involving mountain
14 lions subject to a Scientific Collecting Permit issued in accordance with this
15 section.

16 (2) “Permitholder” means a person to whom the department has issued a
17 Scientific Collecting Permit in accordance with this section.

18 (3) “Scientific Collecting Permit” or “permit” means a permit issued pursuant to
19 **Section 1002** for a research project involving mountain lions in accordance with
20 this section.

21 (b) The department may authorize qualified individuals, educational institutions,
22 governmental agencies, or nongovernmental organizations to conduct scientific
23 research involving mountain lions pursuant to a Scientific Collecting Permit as
24 provided in **Section 1002**.

25 (c) The department may authorize permitholders to pursue, capture, temporarily
26 possess, temporarily injure, mark, attach to or surgically implant monitoring or
27 recognition devices in, provide veterinary care to, and transport, mountain lions, or
28 any product of a mountain lion.

29 (d) In addition to the requirements in **Section 1002**, an authorized research
30 project shall be designed to do the following:

31 (1) Contribute to the knowledge of natural wildlife ecosystems.

32 (2) Minimize disruptions in the lives and movements of mountain lions and
33 other wildlife, as well as impacts to mountain lion or other wildlife habitat, while
34 maintaining the permitholder’s research objectives.

35 (3) Directly or indirectly support the sustainability and survival of mountain lion
36 populations and healthy ecosystems.

37 (4) Prevent the permanent injury or killing of any mountain lion.

38 (e) An authorized research project shall be governed by the Scientific Collecting
39 Permit. The permit shall include, at a minimum, proposed research methods and
40 recordkeeping procedures that address the following:

1 (1) The capture of, anesthetization of, collection of diagnostic samples from, and
2 transport of, mountain lions and products of mountain lions, and the attaching to
3 or surgically implanting monitoring or recognition devices or markings in, and
4 providing veterinary care as required for the health, safety, and humane treatment
5 of, animals affected by the research project.

6 (2) The recording of the adverse effects of authorized research procedures on
7 mountain lions and other wildlife.

8 (3) The qualifications of onsite personnel necessary for carrying out authorized
9 research procedures. A permit applicant shall submit verifiable documentation
10 demonstrating that at least one onsite staff person has at least one year of
11 experience in proposed research methods that involve activities described in
12 subdivision (c).

13 (4) Annual and final reports to the department.

14 (f) The department shall notify the public at least 30 days prior to the issuance of
15 a permit, and, upon request, shall make available to the public copies of the permit
16 and annual and final reports.

17 (g) The department shall handle any mortality or permanent injury to a mountain
18 lion as a result of research authorized pursuant to this section in a manner
19 consistent with the reporting and processing requirements imposed in Section
20 10350.

21 **Comment.** Section 11160 continues former Fish and Game Code Section 4810 without
22 change, except as indicated below:

23 The following nonsubstantive changes are made:

- 24 • Cross-references to former Fish and Game Code Sections 1002 and 4807 are updated.
- 25 • A reference to “parts” of a mountain lion is deleted as superfluous. See Section 95
- 26 (reference to animal generally includes part of animal).
- 27 • The word “thereof” is replaced with “of mountain lions.”

28 TITLE 6. FULLY PROTECTED MAMMALS

29 CHAPTER 1. GENERAL PROVISIONS

30 § 11200. Take generally prohibited

31 11200. Except as provided in this title, **Section 2081.7 or 2835**, fully protected
32 mammals may not be taken or possessed at any time. No provision of this code or
33 any other law shall be construed to authorize the issuance of permits or licenses to
34 take any fully protected mammal, and no permits or licenses heretofore issued
35 shall have any force or effect for that purpose.

36 **Comment.** Section 11200 continues the first two sentences of former Fish and Game Code
37 Section 4700(a)(1) without change, except as indicated below:

38 The following nonsubstantive changes are made:

- 39 • The words “this title” are added to incorporate other code provisions containing
- 40 exceptions to the prohibition stated in former Fish and Game Code Section 4700(a)(1).
- 41 • Cross-references to former Fish and Game Code Sections 2081.7 and 2835 are updated.

- References to “parts” of fully protected mammals are deleted as superfluous. See Section 95 (reference to animal generally includes part of animal).

Staff Note. Existing Fish and Game Code Section 4700(a)(1) provides that “Except as provided in Section 2081.7 or 2835, fully protected mammals or parts thereof may not be taken or possessed at any time.” However, Section 4700 itself (which would be continued by the provisions in this proposed chapter) provides exceptions to that prohibition.

In addition, existing Section 4902 (which would be continued by proposed Sections 11310 and 11315 in Chapter 2 of this title) provide for limited sport hunting of a category of bighorn sheep (mature Nelson bighorn rams), which are generally classified by existing Section 4700(b)(2) as fully protected mammals.

Proposed Section 11200 would therefore restate the list of provisions containing exceptions to the prohibition against the take or possession of fully protected mammals to include the provisions of this title.

The staff invites comment on whether that restatement would substantively change the meaning of existing Section 4700(a)(1).

§ 11205. Take for scientific purposes

11205. (a) The department may authorize the taking of fully protected mammals for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, subject to the following:

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

(2) The notification shall be published in the California Regulatory Notice Register, and be made available to each person who has notified the department, in writing, of that person’s interest in fully protected species and has provided an email address, if available, or postal address to the department.

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

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

Comment. Section 11205 continues the third through sixth sentences of former Fish and Game Code Section 4700(a)(1), and Section 4700(a)(2), without change, except as indicated below:

The following nonsubstantive changes are made:

- Subdivision and paragraph designations are added.
- The words “However” and “who” are deleted as superfluous.
- The words “those species” are replaced with “fully protected mammals.”
- The words “, subject to the following:” are added for clarity.
- The words “of those species” are replaced with “fully protected mammals.”
- A comma is added for clarity.
- The words “his or her” are replaced with “that person’s.”
- The word “e-mail” is replaced with “email.”
- A cross-reference to former Fish and Game Code Section 4700(a)(2) is updated.

1 (a) Data on the numbers, age, sex ratios, and distribution of bighorn sheep
2 within the management unit.

3 (b) A survey of range conditions and a report on the competition that may exist
4 as a result of human, livestock, wild burro, or any other mammal encroachment.

5 (c) An assessment of the need to relocate or reestablish bighorn populations.

6 (d) A statement on the prevalence of disease or parasites within the population.

7 (e) Recommendations for achieving the policy objective of Section 11300.

8 **Comment.** Section 11305 continues former Fish and Game Code Section 4901 without
9 change, except as indicated below:

10 The following nonsubstantive change is made:

- 11 • A cross-reference to former Fish and Game Code Section 4900 is updated.

12 Article 2. Nelson Bighorn Sheep

13 § 11310. Population management

14 11310. (a) The commission may adopt all regulations necessary to provide for
15 biologically sound management of Nelson bighorn sheep (subspecies *Ovis*
16 *canadensis nelsoni*).

17 (b) After the plans for the management units developed by the department
18 pursuant to Section 11305 have been submitted, the commission may authorize
19 sport hunting of mature Nelson bighorn rams, subject to the following:

20 (1) Before authorizing the sport hunting, the commission shall take into account
21 the Nelson bighorn sheep population statewide, including the population in the
22 management units designated for hunting.

23 (2) Notwithstanding **Section 219**, the commission shall not adopt regulations
24 authorizing the sport hunting in a single year of more than 15 percent of the
25 mature Nelson bighorn rams in a single management unit, based on the
26 department's annual estimate of the population in each management unit.

27 **Comment.** Subdivisions (a) and (b) of Section 11310 continues former Fish and Game Code
28 Section 4902(a) and (b) without change, except as indicated below:

29 The following nonsubstantive changes are made:

- 30 • Subdivision and paragraph designations are revised.
31 • The words “for the management units” are relocated.
32 • Cross-references to former Fish and Game Code Sections 219 and 4901 are updated.
33 • The words “, subject to the following:” are added for clarity.
34 • The word “however” is deleted as superfluous.
35 • The words “Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) are game
36 mammals only for the purposes of sport hunting described in subdivision (b) of Section
37 4902” are replaced with “For the purposes of the sport hunting described in subdivision
38 (b) only, Nelson bighorn sheep are game mammals.”

39 **Staff Notes.** (1) Existing Fish and Game Code Section 4902(b) (proposed Section 11310(b))
40 grants the Fish and Game Commission specified authority, after plans for management units
41 developed by the department pursuant to Section 4901 “have been submitted.” However, neither
42 Section 4901 nor 4902 contain any other reference or any requirement relating to the
43 “submission” of these plans.

44 **The staff invites comment on the meaning of this language.**

1 § 11315. Tags

2 11315. (a) The fee for a tag to take a Nelson bighorn ram may be determined by
3 the commission, but shall not exceed five hundred dollars (\$500).

4 (b) Fee revenues shall be deposited in the Big Game Management Account
5 established in Section 9400.

6 (c) The commission shall annually direct the department to authorize not more
7 than three of the tags available for issuance that year to take Nelson bighorn rams
8 for the purpose of raising funds for programs and projects to benefit Nelson
9 bighorn sheep. These tags may be sold to residents or nonresidents of the State of
10 California at auction or by another method and shall not be subject to the fee
11 limitation prescribed in subdivision (a).

12 (d) If more than one tag is authorized, the department shall designate a nonprofit
13 organization organized pursuant to the laws of this state, or the California chapter
14 of a nonprofit organization organized pursuant to the laws of another state, as the
15 seller of not less than one of these tags. The number of tags authorized for the
16 purpose of raising funds pursuant to this subdivision, if more than one, shall not
17 exceed 15 percent of the total number of tags authorized pursuant to Section
18 11310.

19 (e) All revenue from the sale of tags pursuant to this section shall be deposited
20 in the Big Game Management Account established in Section 9400.

21 (f) No tag issued pursuant to this section shall be valid until the licensee has
22 successfully completed a prehunt hunter familiarization and orientation and has
23 demonstrated to the department familiarity with the requisite equipment for
24 participating in the hunting of Nelson bighorn rams, as determined by the
25 commission. The orientation shall be conducted by the department at convenient
26 locations and times preceding each season, as determined by the commission.

27 **Comment.** Section 11315 continues former Fish and Game Code Section 4902(c)-(e) without
28 change, except as indicated below:

29 The following nonsubstantive changes are made:

- 30 • Subdivision designations are added.
- 31 • Cross-references to former Fish and Game Code Sections 3953, 4902(b), 4902(c), and
32 4902(d) are updated.
- 33 • The words “and, upon appropriation by the Legislature, shall be expended as set forth
34 in that section” are deleted as superfluous. See Section 9405(a).
- 35 • The words “Commencing with tags sold for the 1993 hunting season,” are deleted as
36 superfluous.
- 37 • The words “unless and until” are replaced with “until.”
- 38 • The words “that he or she is familiar” are replaced with “familiarity.”

39  **Staff Note.** Existing law does not include an express requirement that a person have a tag in
40 order to lawfully take Nelson bighorn ram. Section 11315 governs the issuance of a tag, but
41 contains no requirement that a tag be obtained. Compare proposed Sections 9505 (bear), 9700
42 (deer), 10605 (wild pig). Nor is there any provision requiring that a tag be attached to a Nelson
43 bighorn ram that has been taken, that a tag be countersigned, or that any part of the ram be
44 retained and shown to law enforcement on demand. Compare proposed Sections 9570, 9600
45 (bear), 9710, 9715 (deer). These seem like significant gaps in the law governing sport hunting of
46 Nelson bighorn rams.

1 **The staff invites comment on this issue.**

2 **§ 11320. Use of revenue**

3 11320. (a) Revenue from the fees authorized by this chapter shall be deposited
4 in the Big Game Management Account established in Section 9400 and, upon
5 appropriation by the Legislature, shall be expended as set forth in that section.

6 (b) Administrative overhead shall be limited to the reasonable costs associated
7 with the direct administration of the program.

8 (c) These funds shall be used to augment, and not to replace, moneys
9 appropriated from existing funds available to the department for the preservation,
10 restoration, utilization, and management of bighorn sheep. The department shall
11 maintain internal accountability necessary to ensure that all restrictions on the
12 expenditure of these funds are met.

13 **Comment.** Section 11320 continue former Fish and Game Code Section 4903 without change,
14 except as indicated below:

15 The following nonsubstantive changes are made:

- 16 • Subdivision designations are added.
17 • A cross-reference to former Fish and Game Code Section 3953 is updated.

18 **Article 3. Penalties**

19 **§ 11325. Punishment for taking**

20 11325. Notwithstanding **Section 12000**, the punishment for taking any bighorn
21 sheep in violation of **Chapter 11 (commencing with Section 4900) of Part 3 of**
22 **Division 4**, or any regulation adopted pursuant to a provision in that chapter, is a
23 fine of not more than two thousand dollars (\$2,000) or imprisonment in the county
24 jail for not more than one year, or both that fine and imprisonment.

25 **Comment.** Section 11325 continue former Fish and Game Code Section 12008.5 without
26 change, except as indicated below:

27 The following nonsubstantive changes are made:

- 28 • Cross-references to former Fish and Game Code Section 12000 and Chapter 11
29 (commencing with Section 4900) of Part 3 of Division 4 of that code are updated.
30 • The word “thereto” is replaced with “to a provision in that chapter.”
31 • The word “the” is replaced with “that.”

32 **§ 11330. Enhanced penalty for specified violations**

33 11330. (a) Notwithstanding **Section 12002, 12003.2, 12008, or 12008.5**, the
34 punishment for any person who knowingly violated and has been convicted of any
35 of the following provisions where the violation involved a trophy bighorn sheep
36 shall be a fine of not less than five thousand dollars (\$5,000), nor more than forty
37 thousand dollars (\$40,000), or imprisonment in the county jail for not more than
38 one year, or both that fine and imprisonment:

39 (1) **Section 2001**, if the person took a bighorn sheep outside the established
40 season.

41 (2) **Section 2005**.

1 (3) Section 257.5 of Title 14 of the California Code of Regulations.

2 (4) Section **4304**.

3 (5) Section **4330**.

4 (6) Section **1054.2**, if the person failed to procure the required license or tag
5 prior to taking a bighorn sheep.

6 (b) The commission shall adopt regulations to implement this section, including
7 establishing a trophy designation and monetary value based on the size or related
8 characteristics of bighorn sheep or parts of bighorn sheep.

9 (c) All revenue from fines imposed pursuant to this section shall be deposited in
10 the Big Game Management Account established in Section 9400 and shall be used
11 for the big game management purposes described in that section.

12 (d) Moneys equivalent to 50 percent of the revenue from any fine collected
13 pursuant to this section shall be paid to the county in which the offense was
14 committed, pursuant to Section **13003**. The county board of supervisors shall first
15 use revenues pursuant to this subdivision to reimburse the costs incurred by the
16 district attorney or city attorney in investigating and prosecuting the violation. Any
17 excess revenues may be expended in accordance with Section **13103**.

18 **Comment.** Section 11330 continues the part of former Fish and Game Code Section 12013.3
19 applicable to bighorn sheep without change, except as indicated below:

20 The following nonsubstantive changes are made:

- 21 • Cross-references to former Fish and Game Code Sections 2001, 2005, 3953, 4304,
22 4330, 1054.2, 12002, 12003.2, 12008, 12008.5, and 13003 are updated.
23 • The words “has” and “any of” are added for clarity.
24 • The word “thereof” is replaced with “of bighorn sheep.”

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)
302	9650(a)	3960.4(a)	9100, 10800
303	9650(b)	3960.4(b)-(d)	9695, 10850
331(a)	10410	3960.6(a)	9100, 10800
331(b)	10405	3960.6(b)	9680, 10840
331(c), (d)	10400	3961	9120
332(a)	10200	4000	202
332(b)	10150	4002	10700(a)
332(c)	10160	4003	10700(b)
332(d), (e)	10155	4004(a)	8100
450	10000	4004(b)	8105
451	10035	4004(c)	8110
452	10010	4004(d)	8115
453	10015(a)	4004(e)	8120
454	10015(b)	4004(f)	8125
455	10015(c)	4004(g)	8130
456	10020	4005(a) (1st sent)	8200(a), (b)
457	10025	4005(a) (2nd sent)	273
458	10030	4005(b)	8205
459	10030	4005(c)	8200(b)(6)
460	10035	4005(d)	8202
2575	11000	4005(e)	8200(b)(2)-(5)
2576	11005	4005(f)	8000
3003.1(a) (1st sent)	8055(a)	4006(a)	8210(a)
3003.1(a) (2nd, 3rd sent)	138	4006(b)	8225
3003.1(b)-(c)	8055(a)	4006(c)	8210(b)
3003.1(d)	8050	4007	8215
3006	9720, 10120	4008	8220
3011	9500	4009	8135
3032(a)(1)	9100	4009.5	8230
3032(a)(2)-(d)	9105	4010	10755
3950(a)	204(a)	4011	9000
3950(b)	204(a)(5)	4012	10730
3950.1	204(b), (c)	4030	8300
3951	10215	4031	8305
3952	10210	4032	8315(a), (b)
3953(a), (b)	9400	4033	8315(c)
3953(c)	9405	4034	8310
3953(d)	9410	4035	8320
3953(e) (1st sent)	9415	4036	8350
3953(e) (2nd sent)	9420	4037	8325(a)
3953(f)	9425	4038	8325(b)
3953(g)	9430	4040	8330
3960(a)	9100, 10800	4041	8335
3960(b)	9110(a)	4042	8340
3960(c)(1), (2), (4)	9115	4043	8355
3960(c)(3)	9110(b)	4150	238(a)
3960.2(a)	9100, 10800	4151	238(b)
3960.2(b)-(e)	9690, 10800	4152	10685, 10690, 10735, 10740, 10775

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
4153(1st sent).....	10780(a)	4657	10607
4153 (2nd sent)	9200	4700(a)(1) (1st, 2nd sent)	11200
4154	10780(b)	4700(a)(1) (3rd-6th sent)	11205
4155(a)	10815	4700(a)(2)	11205
4155(b), (c)	10820	4700(a)(3)	11210
4155(d)	10805	4700(b)	201.5
4155(e)	10830	4750	9505
4155(f)	10835	4751	9635
4180	10725	4752	9640
4180.1	9205	4753	9560
4181	9692, 10230, 10665, 10670, 10695, 10750	4754	9645
4181.1	9685, 10665	4755	9570
4181.2	10660	4757	9600
4181.5	10040	4758	9660
4185	9698	4759	9655
4186	10680	4760	9450
4188	10675	4763	9675
4190	9210	4800(a)-(c)	11110
4301(a) (1st sent)	9900	4800(d)	11100
4301(a) (2nd-4th sent)	9905(b)-(d)	4801	11115
4301(b)	9905(a)	4801.5	11155
4302	9715	4802	11120
4303	9915	4803	11125
4304	9300, 9920	4804	11130
4330	9700	4805	11135
4331	9805	4806	11140
4332	9810	4807	11145
4333	9815	4808	11105
4334	9800	4809	11150
4336	9705	4810	11160
4340	9820	4900	11300
4341	9710	4901	11305
4370	9850	4902(a)-(b)	11310(a), (b)
4371	9855	4902 (c)-(e)	11315
4500	10900(a)-(c)	4903	11320
4501	10905	12001.5	9505(b), 9668, 9700(b)
4600	11050	12003.2	10900(d), 11215
4650	10600	12005	9665
4651	10650	12008.5	11325
4652	10605	12013.3	10055, 10250, 10415, 11330
4653	10610	12013.5	9670
4654	10615, 10625(a)	12156	8235
4655	10620		
4656	10625(b)		