

First Supplement to Memorandum 2014-48

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

Memorandum 2014-48 included a discussion of the organization of the animal-specific provisions in the proposed Fish and Wildlife Code.¹ This supplement expands on that discussion, and corrects an omission relating to a footnote in that memorandum.

ORGANIZATIONAL ISSUE

Existing Organization of Proposed Law

The last time the Commission addressed the organizational structure of the proposed Fish and Wildlife Code, it decided that the provisions governing specific types of birds and mammals should be collected under the heading “Hunting,” within a division that collects all hunting and fishing provisions, thus:²

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
...

Proposed Alternative Organization

As discussed in Memorandum 2014-48, the decision to place the animal-specific provisions under the heading of “Hunting” is constraining. The

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 Minutes (Dec. 2013), p. 14.

implication is that only those provisions that relate to *hunting* a specific type of animal would be placed in that location. Animal-specific provisions that do not relate to hunting would need to be located elsewhere. This could lead to line-drawing problems and organizational fragmentation, with provisions relating to a particular type of animal placed in more than one location in the code.³

To avoid those problems, the staff recommends in Memorandum 2014-48 that the animal-specific provisions be taken out from under the “Hunting” heading. Instead, the provisions relating to specific types of animals would be promoted to the same level as the provisions governing hunting, trapping, and fishing generally, thus:⁴

- 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

That is the organization used in the draft that is attached to Memorandum 2014-48 (relating to “mammals”). It allows both hunting and non-hunting provisions that relate to a specific animal to be grouped together and eliminates the need to decide when a provision is a “hunting” provision.

Possible Refinement to Proposed Alternative Organization

If the Commission decides to adopt the proposed alternative organization set out above, the staff would like to propose a possible further refinement.

In the draft attached to Memorandum 2014-48, provisions that govern a particular type of mammal are located under a heading that follows the system of classification of mammals that is used in the existing Fish and Game Code. So, for example, provisions governing bears are located within a title governing game mammals. Thus:

3. Memorandum 2014-48, p. 3.

4. *Id.* at 4.

Division 6. Regulation of Specific Animals

Part 1. Birds

Part 2. Mammals

Title 1. General Provisions

Title 2. Game Mammals

...

Chapter 3. Bears

...

On further reflection, the staff sees three possible problems with that organization of the mammal provisions:

- (1) *A reader would need to know how to classify an animal in order to locate the relevant provisions.* Is a bear a “game mammal” or a “fur-bearing mammal?” The answer to that question would determine the location of the bear provisions.
- (2) *Some mammals may not fit neatly within the existing classification scheme.* For example, bighorn sheep are generally “fully-protected mammals” within the existing scheme. However, adult male Nelson bighorn sheep can be considered game mammals under some circumstances and hunted for sport.
- (3) *The organization could break down in the face of future development of the law.* For example, the existing code classifies mountain lions as “game mammals.” Later, an initiative was enacted providing that mountain lions are “specially protected” and cannot be hunted except in specified circumstances relating to depredation. As a result of that change, mountain lions are neither true game mammals nor fully-protected mammals. If such a change were made after the proposed code is enacted, it could disrupt the proposed organization of the mammal provisions.

To avoid those problems, the staff recommends that the animal-specific provisions not be subordinated to the existing classification scheme. Instead, the animal-specific provisions would be promoted to the same level as the provisions that regulate the various classifications generally. For example:

Division 6. Types of Animals

Part 1. Birds

Part 2. Mammals

Title 1. General Provisions

Title 2. Classes of Mammals

Chapter 1. Game Mammals

Chapter 2. Fur-Bearing Mammals

Chapter 3. Non-Game Mammals
Chapter 4. Fully-Protected Mammals
Title 3. Specific Types of Mammals
Chapter 1. Antelope
Chapter 2. Bear
...

Under that organizational approach, readers would not need to know how to classify a particular mammal in order to locate the provisions governing that type of mammal. It would still be necessary to know which classification a type of mammal occupies in order to find the related class-based rules. But that problem could be addressed through some fairly straightforward signposting at the beginning of each animal-specific chapter. For example:

9450. For the purposes of this title, a bear is a game mammal.

The proposed approach would also avoid any organizational problems that might arise if a type of animal has hybrid status under the classification system (e.g., bighorn sheep) or introduces a new classification concept (e.g., the specially protected status of mountain lions).

The staff recommends the new approach described above.

FOOTNOTE CORRECTION

In Memorandum 2014-48, in conjunction with the discussion of a comment submitted by the Department of Fish and Wildlife relating to the placement of falconry provisions in the proposed law,⁵ a footnote indicates that the Department comment is attached to that memorandum as an Exhibit.⁶ Unfortunately, the Exhibit was inadvertently omitted from the distributed memorandum.

The comment from the Department relating to falconry provisions was part of a letter from the Department commenting on the Commission's concurrent tentative recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*. The letter is attached as an Exhibit to a second memorandum on the Commission's October meeting agenda relating to Fish and

5. Memorandum 2014-48, p. 4.

6. See footnote 8.

Game law, which discusses those comments.⁷ The Department's comments relating to the falconry provisions can be found on page 3 of that Exhibit.

The staff regrets the omission, and apologizes for any confusion.

Respectfully submitted,

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7. See Memorandum 2014-49.