

Memorandum 2014-49

**Fish and Game Law:  
Technical Revisions and Minor Substantive Improvements: Part 1  
(Comments on Tentative Recommendation)**

The Commission<sup>1</sup> is presently studying a complete recodification of the existing Fish and Game Code.<sup>2</sup> Such work requires a comprehensive approach, treating the entire code as a whole.

However, there are some beneficial changes to existing code provisions that can be made incrementally, because they do not depend on reorganization of the code. At the February 2014 meeting, the Commission authorized the staff to prepare separate recommendations for the enactment of such improvements, when appropriate.<sup>3</sup>

Pursuant to that authority, in June 2014, the Commission circulated a Tentative Recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*, proposing a number of technical or minor substantive revisions to the existing Fish and Game Code.

The Commission has received two letters commenting on that tentative recommendation. They are attached to this memorandum as an Exhibit:

*Exhibit p.*

- Harold M. Thomas, Butte County District Attorney’s Office  
(07/21/14) ..... 1
- Angela Donlan, California Department of Fish and Wildlife  
(10/03/14) ..... 3

This memorandum presents analysis of the comment received, and includes some staff recommendations to revise the previously circulated tentative

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. Minutes (Feb. 2014), p. 13.

recommendation. After the Commission makes decisions on the issues raised in this memorandum, the staff will present a draft final recommendation for consideration by the Commission at the December meeting.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code.

#### ANIMAL PARTS

Many provisions of the existing Fish and Game Code that govern particular types of animals are inconsistent and sometimes confusing with regard to whether those provisions apply to *parts* of animals.<sup>4</sup>

The tentative recommendation proposes to address that issue globally, by:

(1) Adding to the existing code a general rule of construction providing that, except where a provision or context requires otherwise, any provision of the code that applies to an animal applies equally to any part of that animal,<sup>5</sup> and

(2) Deleting all references in individual code provisions to parts of animals, except where a referenced animal part appears intended to be a subject of distinct regulation.<sup>6</sup>

#### **Comment of Department of Fish and Wildlife**

The Department of Fish and Wildlife (hereafter, “the Department”) generally approves of the Commission’s proposal addressing the statutory treatment of animal parts.<sup>7</sup> However, the Department requests a few modifications of some of the proposed revisions.

First, the Department suggests a slight revision to proposed Section 80, which would express the new rule of construction.<sup>8</sup> As proposed by the Commission, Section 80 would read as follows:<sup>9</sup>

80. Unless the provision or context otherwise requires, any provision of this code that applies to a whole animal also applies to a part of the animal.

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4. See Tentative Recommendation, pp. 2-4.

5. Proposed Section 80.

6. See Tentative Recommendation, p. 3.

7. Exhibit, p. 3.

8. Exhibit, p. 4.

9. Tentative Recommendation, p. 12.

The Department suggests that the Commission revise the proposed section as follows:

80. ~~Unless the provision or context otherwise requires~~ Except as otherwise required, any provision of this code that applies to a whole animal also applies to a part of the animal.

The Department's offered rationale for the suggestion is that existing Section 2 "already addresses how general definitions are to be construed in the Code in light of context."<sup>10</sup>

Section 2 does address how general definitions in the code should be construed, using the same introductory language as would appear in Section 80:

Unless the provisions or the context otherwise requires, the definitions in this chapter<sup>11</sup> govern the construction of this code and all regulations adopted under this code.

Nevertheless, the staff has three concerns about the Department's suggestion.

First, Section 2 only governs "definitions," and proposed Section 80 does not provide a definition (i.e., it does not define a term of art). It is instead a rule of construction, prescribing how to interpret provisions that are phrased in a certain way or that include a standardized concept. So it is not clear that Section 2 would apply to the rule in Section 80.

Second, the language used in proposed Section 80 is fairly standard. Note that it parallels the language used in Section 2. In general, it is better to use the same language to express the same concept, to avoid arguments that the use of different language was intended to convey a different meaning.

Finally, the unqualified use of the term "required" in the Department's proposed language could be seen as open ended, inviting arguments that the facts of a particular case (rather than the intention of the Legislature) requires a particular result.

**The staff does not recommend that the Commission revise Section 80 as the Department suggests.**

The Department also requests that existing references to animal parts be retained in four sections that the Department identifies as "core" prosecuting authority.<sup>12</sup> The Department believes the technical superfluity of these references

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10. Exhibit, p. 4.

11. Section 80 would appear in the same chapter as Section 2.

12. Exhibit, p. 3.

is outweighed by the need to ensure that prosecutors, courts, and juries will continue to readily understand that these provisions apply to animal parts, without reference to the new rule of construction.

The four sections are identified and briefly discussed below.

*Section 2000. Unauthorized Take*

The tentative recommendation proposes that Section 2000 be revised as follows (with the language relevant to this discussion shown in bold):<sup>13</sup>

2000. (a) It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or ~~regulations made pursuant thereto~~ in a regulation adopted pursuant to this code.

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

The Department recommends that the bolded language be preserved.

*Section 2002. Unlawful Possession*

The tentative recommendation proposes that Section 2002 be revised as follows (with relevant language in bold):<sup>14</sup>

2002. It is unlawful to possess any bird, mammal, fish, reptile, or amphibian, ~~or parts thereof,~~ taken in violation of any of the ~~provisions~~ provision of this code, or ~~of~~ any regulation ~~made under~~ it adopted pursuant to this code.

The Department recommends that the bolded language be preserved. The Department also notes a typographical error (“taken in violation of any of the provision of this code”).<sup>15</sup> If a revision of Section 2002 is retained in the tentative recommendation, that error will be corrected.

*Section 7370. Sturgeon*

The tentative recommendation proposes that Section 7370 be revised as follows (with relevant language in bold):<sup>16</sup>

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13. Tentative Recommendation, p. 26.

14. Tentative Recommendation, p. 27.

15. Exhibit, p. 5.

16. Tentative Recommendation, p. 60.

7370. (a) It is unlawful to take or possess for commercial purposes, buy or sell, or to offer to buy or sell, ~~any whole a sturgeon, or any part thereof, including, but not limited to, eggs~~ or sturgeon eggs, except as follows:

(1) A sturgeon, ~~or parts thereof,~~ or sturgeon eggs that ~~is~~ are taken or possessed by, and ~~is~~ are the cultured progeny of, an aquaculturist who is registered under Section 15101, may be sold or purchased subject to regulations of the commission.

(2) A sturgeon, ~~or parts thereof,~~ or sturgeon eggs that ~~is~~ are taken commercially in another state that permits the sale of the fish and lawfully imported under Section 2363, may be possessed, sold, or purchased.

(3) ~~Sturgeon, or parts thereof, taken pursuant to a sport fishing license in accordance with~~ The possession, purchase, sale, or offer to buy or sell a sturgeon or sturgeon eggs is authorized by Section 7230.

(b) For purposes of this section, it is prima facie evidence that a sturgeon, ~~or parts thereof,~~ is possessed for commercial purposes if the possession of sturgeon is more than two times the sport bag limit.

The Department recommends that the bolded language be preserved.

In addition, the Department suggests that the staff's proposed revision of the Section 7370(a)(3) would inadvertently broaden its application.<sup>17</sup>

Section 7370(a)(3) creates an exception to the prohibitions stated in Section 7370(a) for sturgeon that are taken pursuant to a sport fishing license "in accordance with Section 7230." Section 7320 does not actually authorize the take of sturgeon. Instead, it is a general provision that allows a fish cannery or processor to can or smoke fish taken under a sport fishing license, as a service for the person who took the fish. For that reason, the reference to fish *taken* in accordance with Section 7320 is confusing. However, after reviewing the proposed language, the staff agrees that the revision of Section 7370(a)(3) proposed by the staff would substantively change the scope of that exception.

If a revision of Section 7370 is retained in the tentative recommendation, the staff proposes a much simpler revision of Section 7370(a)(3), which would do nothing other than clarify the confusing language of the section:

(3) ~~Sturgeon, or parts thereof,~~ taken pursuant to a sport fishing license, that is processed in accordance with Section 7230.

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17. Exhibit, p. 7.

*Section 12012. Violation for profit or personal gain*

The tentative recommendation proposes that Section 12012 be revised as follows (with relevant language in bold):<sup>18</sup>

12012. (a) Any person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges any amphibian, bird, fish, mammal, or reptile, ~~or part thereof~~, for profit or personal gain is guilty of a misdemeanor punishable by 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 by both that fine and imprisonment.

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The Department requests that the bolded language be retained.

*Discussion*

The main thrust of the proposed changes relating to parts of animals was to eliminate any uncertainty about whether provisions that do not mention “parts” nonetheless apply to parts. The general rule of construction in proposed Section 80 is sufficient for that purpose. The proposed deletion of “parts” references in various provisions is not strictly necessary to achieve that end. The purpose of those deletions was primarily to set a clear pattern for future development of the law, and only secondarily to reduce the likelihood that the presence of parts references in some provisions and not others left room for confusion.

Given the Department’s opinion that the four provisions above should continue to refer expressly to parts in order to avoid any uncertainty in key charging provisions, **the staff recommends that those references be retained.** There would seem to be no harm in doing so. At worst, the references are superfluous. As to the inference created by inconsistent deletion, the express terms of proposed Section 80 and the Commission Comments following each of the affected provisions should be enough to overcome any confusion.

Two of the four provisions at issue — Section 2002 and 12012 — were included in the tentative recommendation solely to delete the parts references. The staff recommends that **the revisions to those two sections be deleted from the tentative recommendation in their entirety.**

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18. Tentative Recommendation, p. 68.

However, a revision to Section 2000 was also proposed for a distinct purpose, relating to the statutory treatment of reptiles and amphibians.<sup>19</sup>

The staff recommends that **a revision of Section 2000 remain in the tentative recommendation, but modified as follows to retain the references in the section to animal parts:**

2000. (a) It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or ~~regulations made pursuant thereto~~ in a regulation adopted pursuant to this code.

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

**Comment.** Subdivision (b) of Section 2000 is amended to add amphibians.

Section 2000 is also amended to add subdivision designations and make nonsubstantive stylistic changes.

Finally, as previously discussed, a revision of Section 7370 was proposed both to delete references to animal parts, as well as clarify a substantially confusing subdivision in the section.

The staff recommends that **a revision of Section 7370 also remain in the tentative recommendation, but modified as follows to retain the references in the section to animal parts:**

7370. (a) It is unlawful to take or possess for commercial purposes, buy or sell, or to offer to buy or sell, any whole sturgeon, or any part ~~thereof~~ of a sturgeon, including, but not limited to, its eggs, except as follows:

(1) A sturgeon, ~~or parts thereof~~ part of a sturgeon, or sturgeon eggs ~~that is~~ taken or possessed by, and ~~is~~ the cultured progeny of, an aquaculturist who is registered under Section 15101, may be bought or sold ~~or purchased~~ subject to regulations of the commission.

(2) A sturgeon, ~~or parts thereof~~ part of a sturgeon, or sturgeon eggs ~~that is~~ taken commercially in another state that permits the sale of ~~the fish~~ sturgeon, and lawfully imported under Section 2363, may be possessed, bought, or sold, ~~or purchased.~~

(3) Sturgeon, or ~~parts thereof~~ part of a sturgeon, taken pursuant to a sport fishing license, that is processed in accordance with Section 7230.

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19. See discussion *infra*.

(b) For purposes of this section, it is prima facie evidence that a sturgeon, ~~or parts thereof~~ or part of a sturgeon, is possessed for commercial purposes, if the possession ~~of sturgeon~~ is more than two times the sport bag limit.

**Comment.** Section 7370 is amended to make nonsubstantive stylistic changes.

### Comments of Butte County District Attorney

The Butte County District Attorney's Office (hereafter, "Butte County") finds the Commission's proposal relating to animal parts to be a "reasonable clarifying change."<sup>20</sup> However, it urges the Commission to go further, broadening the scope of the proposed rule of construction.

As drafted, proposed Section 80 only applies to "animals." Butte County proposes that the section apply to all "wildlife," as that term is defined in Section 711.2(a):

For purposes of this code, unless the context otherwise requires, "wildlife" means and includes all wild animals, birds, plants, fish, amphibians, reptiles, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.

Implementing this suggestion would mean the "parts" rule of construction proposed by the Commission would also apply to any plant, habitat, or ecological community referenced in or governed by any provision of the code.

While that might be a sensible change as a matter of policy, the Commission specifically declined to extend the proposed parts rule to plants, because it has not studied the matter sufficiently to be sure of all of the consequences of such a change.<sup>21</sup> **The staff recommends against including the proposed change in the current proposal. If the Commission agrees, the staff will watch for relevant provisions as the study proceeds, with an eye toward evaluating whether such a change should be made in a future proposal.**

Butte County also raises a specific objection to the Commission's proposed deletion of the "parts" reference in Section 45, which defines the term "fish:"<sup>22</sup>

45. "Fish" means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any ~~part~~, spawn, or ova thereof.<sup>23</sup>

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20. Exhibit, p. 1.

21. Tentative Recommendation, fn. 10.

22. Exhibit, p. 2.

23. Tentative Recommendation, p. 11.

Butte County requests that this revision not be included in the proposed law. It notes that various life stages of aquatic insects, such as the larval stage of a caddis fly, are included in the reference to “part” of an invertebrate, and need to continue to be included within the scope of the definition of “fish.” Presumably a similar concern would apply to the early metamorphic stages of amphibians, such as a tadpole.

The staff does not fully understand the concern. In the staff’s opinion, a reference to a “part” of an animal is intended to be a reference to less than the entire body of the animal (e.g., the skin or feathers). Animals in early metamorphic stages of development are not “parts” of animals in that sense. They are *entire* animals, just not fully mature animals.

Moreover, proposed Section 80 would apply to Section 45, making clear that a reference to a “fish” (including a reference to an invertebrate like a caddis fly), would include a “part” of that fish (or caddis fly). If “part” is currently understood to refer to early metamorphic stages of animals, then Section 80 would seem to preserve that understanding.

In the absence of further explanation from Butte County, **the staff continues to recommend that Section 45 be revised as proposed in the tentative recommendation.**

However, perhaps the concern from Butte County could be addressed by revising the Commission’s Comment to Section 45 as follows:

45. “Fish” means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any ~~part~~, spawn, or ova thereof.

**Comment.** Section 45 is amended to delete a superfluous reference to a “part” of a wild fish, mollusk, crustacean, invertebrate, or amphibian. This is a nonsubstantive change because, as a general rule, a reference to an animal includes a part of that animal. See Section 80 (~~reference to animal generally includes part of animal~~).

**Does the Commission wish to make that change?**

#### REPTILES AND AMPHIBIANS

There are a handful of provisions in the code that expressly apply to all types of vertebrates except either reptiles or amphibians. As the Commission saw no policy reason to exclude just one of those categories of vertebrates from such a

provision, the tentative recommendation generally proposes that amphibians and reptiles be included in provisions that govern all other vertebrates.<sup>24</sup>

### **Comment of Department**

The Department has no specific objections to the Commission's proposed revisions adding references to reptiles or amphibians to selected sections of the code.<sup>25</sup> However, the Department raises two general concerns.<sup>26</sup>

First, the Department indicates it does not presume that every omission of a reference to a reptile or amphibian in the code was necessarily inadvertent, implying that the Commission's general assumption might be incorrect in specific instances. Second, the Department expresses concern that adding references to amphibians in provisions that already govern fish will exacerbate an existing redundancy in the code relating to the term "fish" (which as defined includes amphibians, mollusks, crustaceans, and invertebrates).<sup>27</sup>

The Department suggests it might be useful to "present this issue in its entirety to the Legislature."<sup>28</sup>

The Commission has previously discussed the ambiguity referred to by the Department.<sup>29</sup> Although the definition of the term "fish" expressly includes amphibians, there are many code provisions in which it is not clear the term is being used in its strictly defined sense. But in order to address that problem, the Commission would need to make hundreds of educated guesses about the intended meaning of the term in hundreds of code sections, often without any guidance from case law or legislative history.

After considering this issue, the Commission decided not to take on that project in the course of this study, and instead note the issue for the Legislature in the narrative portion of its recodification recommendation.<sup>30</sup>

The staff recommends **no change to the revisions relating to reptiles and amphibians in the tentative recommendation, based on the Department comment on that issue.**

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24. Tentative Recommendation, p. 4.

25. Exhibit, pp. 3-4.

26. Exhibit, p. 4.

27. See Section 45.

28. Exhibit, p. 4.

29. See Memorandum 2013-12, pp. 5-7.

30. Minutes (April 2013), p. 12.

## Comment of Butte County District Attorney

Butte County “support[s] clarification that the protections of the fish and game code apply to amphibians and reptiles as well as fish, mammals, and birds.”<sup>31</sup> However, it again urges that the Commission go further, and globally revise provisions presently applicable only to selected vertebrates so that they instead apply to all “wildlife.”<sup>32</sup>

Such a change would extend protections designed for animals to plants and entire ecosystems, which could produce potentially far-reaching substantive effects. In the staff’s view, such changes are beyond the mostly nonsubstantive character of the current study. **The staff recommends against making this change in the tentative recommendation.**

### DOCUMENT TRANSLATION

The tentative recommendation proposes a revision of Section 7, mandating that required statements or reports be made in English, to make clear the section does not prohibit an unofficial translation of those documents into other languages.<sup>33</sup>

**Neither commenter has any objection to this revision.**<sup>34</sup>

### TECHNICAL CORRECTIONS

The tentative recommendation also proposes a number of technical corrections to existing code sections. The commenters request reconsideration of the revisions described below.

## Transportation of Animals (Section 1003)

The tentative recommendation proposes to revise Section 1003 as follows:<sup>35</sup>

1003. Mammals, birds, and ~~the nest~~ their nests and eggs ~~thereof~~, fish and their eggs ~~thereof~~, reptiles, amphibians, mollusks, crustaceans, or any other form of plant or animal life taken under the provisions of ~~such~~ a scientific or propagation permit issued pursuant to Section 1002 may be shipped or transported anywhere within or without the state if prior written approval is obtained

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31. Exhibit, p. 2.

32. *Id.*

33. Tentative Recommendation, pp. 5, 11.

34. Exhibit, pp. 2, 4.

35. Tentative Recommendation, p. 21.

from the department and ~~each such~~ the shipment is accompanied by the name, address, and permit number of the person holding the scientific or propagation permit.

The Department suggests that the words “issued pursuant to Section 1002” should not be added to the section, because scientific or propagation permits can be issued under other unspecified code sections.<sup>36</sup> However, Section 1003 only applies to animals taken under the provisions of “such” a scientific or propagation permit.

To conform to modern drafting practice, any revision of this section should excise the word “such,” because of the ambiguity the word often creates (as in this section). And since there is no antecedent in the text of Section 1003 that clearly indicates the intended meaning of the word, we have to look elsewhere to see if we can determine its meaning.

Section 1003 immediately follows Section 1002, which provides in part:

The department may issue permits, subject to restrictions and regulations that the department determines are desirable, to take or possess, in any part of the state, for scientific, educational, or propagation purposes, mammals, birds and the nests and eggs thereof, fish, amphibians, reptiles, or any other form of plant or animal life.<sup>37</sup>

Both Sections 1002 and 1003 were added in the same bill, in 1957.<sup>38</sup> It seems very likely that Section 1003 uses the phrase “the provisions of such a scientific or propagation permit” to refer to the provisions of a permit issued under Section 1002(a). That is the assumption underlying the proposed revision to Section 1003. The staff sees it as unlikely that “such” was intended to refer to all scientific or propagation permits that may be authorized anywhere in the code.

Ultimately, that may be a distinction without much of a difference. The effect of the language at issue in Section 1003 is to authorize the transportation of animals that are taken with a lawful scientific or propagation permit, *subject to the specific written permission of the department*. Given that these types of permits are authorized elsewhere in the code, there would seem to be little harm in broadening Section 1003 to encompass transportation under those permits. The Department would still exercise control over each requested transport, and

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36. Exhibit, pp. 4-5.

37. Section 1002(a).

38. 1957 Cal. Stat. ch. 456.

would presumably not authorize transportation that is unlawful or against public policy.

**Unless the Commission feels otherwise, the staff will investigate this issue further, and provide a staff recommendation to the Commission at the December meeting in conjunction with the presentation of a draft final recommendation.**

### **Hunter Education (Section 1053.5)**

The tentative recommendation proposes to revise Section 1053.5 as follows:<sup>39</sup>

1053.5. Applicants for hunting licenses ~~pursuant to subdivision (a) of Section 1053~~ shall first satisfactorily complete a hunter education equivalency examination and obtain a certificate of equivalency as provided by regulations adopted by the commission, or show proof of completion of a hunter education training course, or show a previous year's hunting license.

The Department urges that this revision not be proposed, "because the cross-reference proposed for deletion is not in error."<sup>40</sup> The Department indicates that "Subdivision (a) of section 1053 appropriately refers to the non-resident license section."<sup>41</sup>

While the staff appreciates that feedback, we still do not understand the purpose or effect of the cross-reference. It is the staff's understanding that *all* applicants for hunting licenses are required to complete one of the specified education requirements of Section 1053.5. If that is correct, what is the purpose of the limiting language?

If the staff is incorrect, and Section 1053.5 is intended to apply only to nonresidents (as seems to be suggested by the Department's response), the cross-reference still appears to be defective, for two different reasons. First, Section 1053(a) is not limited in its application to nonresidents:

1053. (a) A person shall not obtain more than one license, permit, reservation, or other entitlement of the same class, or more than the number of tags authorized by statute or regulation for the same license year, except under one of the following conditions:

(1) Nonresident hunting licenses issued pursuant to paragraphs (4) and (5) of subdivision (a) of Section 3031, and short-term sport fishing licenses issued pursuant to paragraphs (3), (4), and (5) of

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39. Tentative Recommendation, p. 22.

40. Exhibit, p. 5.

41. *Id.*

subdivision (a) of Section 7149, and paragraphs (3), (4), and (5) of subdivision (a) of Section 7149.05.

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

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

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

In addition, Section 1053(a) does not apply to licenses sold through the Department's Automated License Data System (ALDS).<sup>42</sup> There does not appear to be any reason to limit the effect of Section 1053.5 to non-ALDS license sales.

**The staff will investigate this issue further and report our findings in a future memorandum.**

### **Reward for Taking (Section 2003)**

The tentative recommendation proposes to revise Section 2003 as follows:<sup>43</sup>

2003. (a) Except as specified in subdivisions (b), (c), and (d), it is unlawful to offer any prize or other inducement as a reward for the taking of any game ~~birds, mammals, fish, reptiles, or amphibians~~ bird, mammal, fish, reptile, or amphibian in an individual contest, tournament, or derby.

(b) The department may issue a permit to any person authorizing that person to offer a prize or other inducement as a reward for the taking of any game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons who are under the age of 16 years, or who are physically or mentally challenged, have a physical or mental disability, and the primary purpose of the contest, tournament, or derby is to introduce young those anglers to, or educate them about fishing.

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42. See Section 1053(b).

43. Tentative Recommendation, pp. 27-28.

All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

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

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

The Department recommends against revising the reference in subdivision (b) to persons “who are physically or mentally challenged” to instead refer to persons “who have a physical or mental disability.”<sup>44</sup> The Department offers that the term “disability” is used elsewhere in the code to refer to a condition that must be supported by documentation, and the term “challenge[d]” may be understood as referring to a broader category of persons.

The staff has located four provisions in the code that allow a person with a documented disability to be afforded some type of special benefit.<sup>45</sup> However, in each case the qualifying disability is specified in the code section. There is also at least one other reference in the code to “disabled persons,” which is accompanied by no further definition or specification.<sup>46</sup>

The terms “physically challenged” and “mentally challenged” can be stigmatizing (similar to terms such as “retarded,” “handicapped,” or “mentally ill”), because they label and define a person by a single characteristic.<sup>47</sup> In general, those in the disability community prefer “people-first language,” as is used in the proposed revision.

Nonetheless, we should not introduce inadvertent substantive restrictions in an attempt to use more modern language.

**The staff does not believe that the proposed change would do so, but it merits discussion. What is the Commission’s view on this revision?**

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44. Exhibit, pp. 5-6.

45. See Sections 3033 (reduced fee hunting license for disabled veteran), 3038 (special hunting permit for member of armed forces who is at least 70 percent disabled), 7150 (reduced fee sport fishing license for disabled veteran), 7151 (free sport fishing license for persons with specified disabilities)

46. See Section 217.5 (relating to identification of sport fishing areas that are accessible to “disabled persons”).

47. See general discussion at <<http://sudcc.syr.edu/LanguageGuide/>>.

## Civil Liability (Section 2014)

The tentative recommendation proposes to revise Section 2014 as follows:<sup>48</sup>

2014. (a) It is the policy of this state to conserve its natural resources and to prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or amphibia.

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

~~(b)~~ (c) The measure of damages is the amount ~~which~~ that will compensate for all the detriment proximately caused by the taking or destruction of the birds, mammals, fish, reptiles, or amphibia.

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

~~(d) This section does not apply to persons or local agencies engaged in agricultural pest control, to the destruction of fish in irrigation canals or works or irrigation drainages, or to the destruction of birds or mammals killed while damaging crops as provided by law.~~

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

(1) Persons or local agencies engaged in agricultural pest control.

(2) The destruction of fish in irrigation canals or works, or irrigation drainages.

(3) The lawful destruction of a bird or mammal killed while damaging crops.

....

Butte County asserts that the Commission's proposed revision of existing Section 2014(d) (restated in a new subdivision (e)) would represent an unintended substantive change to existing law, based on omission of the word "lawful" in Sections 2014(e)(1) and (2).<sup>49</sup> More specifically, Butte County asserts that "only lawful destruction of fish in irrigation canals and lawful killing in the

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48. Tentative Recommendation, pp. 30-31.

49. Exhibit, p. 2.

course of agricultural pest control” are exempted from the application of the section.

Although the intent of the staff in proposing a revision of Section 2014(d) was only to make the paragraph more readable, this contention by Butte County reveals an ambiguity in the existing provision that may be beyond the scope of this particular recommendation. It is not entirely clear from the grammatical structure of Section 2014(d) whether the “as provided by law” limitation at the end of the subsection should be read as applying to all three exceptions listed in the provision, or only the last. Given the staff’s uncertainty on that issue, the simplest thing would be to simply revert to the existing language for now. This would not resolve the ambiguity, but neither would it codify an incorrect interpretation.

The staff recommends that **the revision of Section 2014 in the tentative recommendation be modified so as to retain subdivision (d), and delete proposed subdivision (e).**

#### **Unlawful Entry Onto Land (Section 2016)**

The tentative recommendation proposes to revise Section 2016 as follows:<sup>50</sup>

~~2016. It is unlawful to enter any lands under cultivation or enclosed by a fence, belonging to, or occupied by, another, or to enter any uncultivated or unenclosed lands, including lands temporarily inundated by waters flowing outside the established banks of a river, stream, slough, or other waterway, where signs forbidding trespass or hunting, or both, are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering those lands, for the purpose of discharging any firearm or taking or destroying any mammal or bird, including any waterfowl, on those lands without having first obtained written permission from the owner, or his or her agent, or the person in lawful possession of, those lands. Signs may be of any size and wording that will fairly advise persons about to enter the land that the use of the land is so restricted.~~

It is unlawful to enter any land for the purpose of discharging any firearm or taking or destroying any mammal or bird, including any waterfowl, on that land, without having first obtained written permission from the owner, the owner’s agent, or the person in lawful possession of that land, if any of the following is true:

(a) The land belongs to or is occupied by another person and is either under cultivation or enclosed by a fence.

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50. Tentative Recommendation, p. 32.

(b) There are signs of any size and wording forbidding trespass or hunting or both displayed along all exterior boundaries and at all roads and trails entering the land, including land temporarily inundated by water flowing outside the established banks of a river, stream, slough, or other waterway, at intervals not less than three to the mile, which fairly advise a person about to enter the land that the use of the land is so restricted.

Butte County believes that the proposed revision of this section will change existing law.<sup>51</sup> It asserts that Section 2016 presently prohibits only entry upon land enclosed by “posted fencing at specified distances,” and the Commission’s proposed revision would make criminally liable any duck hunter entering a body of water that turned out to be flooded agricultural land on which posted signs were underwater.

Butte County also offers that Section 2016 “has been of considerable controversy over the decades,” and suggests that no substantive change be made to the section.<sup>52</sup>

The staff is not sure that the Commission’s proposed revision of the section would expose the unknowing duck hunter described by Butte County to liability. However, if there is any significant chance that our stylistic revisions could inadvertently affect the meaning of a section that imposes criminal liability, we should probably defer to the experts on the matter.

The staff recommends that **the proposed revision of Section 2016 be deleted from the tentative recommendation.**

### **Prohibited Methods of Take (Section 3005)**

The tentative recommendation proposes to revise Section 3005 as follows:<sup>53</sup>

3005. (a) Except as otherwise provided in this code, it is unlawful to take a bird or mammal with a net, pound, cage, trap, set line or wire, or poisonous substance, or to possess a bird or mammal so taken, whether taken within or without this state. It is unlawful to take birds or mammals with any net, pound, cage, trap, set line or wire, or poisonous substance, or to possess birds or mammals so taken, whether taken within or without this state, except as provided in this code or, when relating to ongoing mining operations, in accordance with a mitigation plan approved by the department.

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51. Exhibit, p. 2.

52. *Id.*

53. Tentative Recommendation, pp. 39-41.

~~(b)(1) Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of birds and mammals. When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis.~~

~~(2) Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including pending of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds.~~

~~(3) The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan shall result in an overall reduction in take of avian or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site specific basis and may provide for offsite mitigation measures designed to reduce avian mortality. The mine operator shall submit monthly monitoring reports on avian mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures.~~

~~(4) The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved.~~

~~(5) The mining operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of copies, as determined by the department, of the mitigation plan for public review.~~

~~(c) Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section.~~

~~(d) This section does not apply to the lawful taking of fur-bearing mammals, nongame birds, nongame mammals, or mammals found to be injuring crops or property, to the taking of birds or mammals under depredation permits, to taking by employees of the department acting in an official capacity, or to taking in accordance with the conditions of a scientific or propagation permit by the holder of that permit.~~

~~(b) In the absence of evidence that a bird or mammal was taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, proof of possession of a bird or mammal is~~

prima facie evidence that the bird or mammal was taken with a net, pound, cage, trap, set line or wire, or poisonous substance.

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

(1) The lawful taking of a fur-bearing mammal, nongame bird, or nongame mammal.

(1) The lawful taking of a mammal found to be injuring crops or property.

(2) The taking of a bird or mammal under a depredation permit.

(3) The taking of a bird or mammal by an employee of the department acting in an official capacity.

(4) The taking of a bird or mammal in accordance with the conditions of a scientific or propagation permit by the holder of that permit.

(5) The taking of a bird or mammal in accordance with an ongoing mining operation mitigation plan approved by the department pursuant to subdivision (d).

(d)(1) Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of birds and mammals. When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis.

(2) Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including ponding of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds.

(3) The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan shall result in an overall reduction in take of bird or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site-specific basis and may provide for offsite mitigation measures designed to reduce bird mortality. The mine operator shall submit monthly monitoring reports on bird mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures.

(4) The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved.

(5) The mine operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of

copies, as determined by the department, of the mitigation plan for public review.

The Department raises two issues about the revision of this section.

First, throughout this section, the staff has proposed that the word “avian” be replaced with the more familiar “bird.” The Department notes one place where the change was not made (in proposed Section 3005(d)(4)).<sup>54</sup> **That oversight will be corrected in the tentative recommendation.**

Second, the Department opposes the revision of Section 3005(c) (in a new proposed Section 3005(b), indicating that it interprets the revision as an “unfavorable substantive change to the evidentiary standard.”<sup>55</sup> That was not the staff’s intention.

The existing provision states:

Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section.

The staff read this provision to mean the following: If it is proven that a person possesses a bird or mammal and the condition of the bird or mammal does not show that it was taken by a lawful method (e.g., shot with a gun), those facts are prima facie evidence that the bird or mammal was taken by one of the specified unlawful methods. The staff believes that the proposed language produces the same result:

In the absence of evidence that a bird or mammal was taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, proof of possession of a bird or mammal is prima facie evidence that the bird or mammal was taken with a net, pound, cage, trap, set line or wire, or poisonous substance.

The Department’s letter does not explain how the proposed language would change the existing standard. **The staff will seek further clarification of that issue from the Department, and provide additional information in a future memorandum.**

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54. Exhibit, p. 6.

55. *Id.*

## Hunting Dogs (Section 3008)

The tentative recommendation would revise Section 3008 as follows:<sup>56</sup>

~~3008. The physical control of a dog by its owner while the dog is engaged in hunting in an area where the owner is otherwise authorized to hunt, shall be as required by this code or regulations made pursuant thereto.~~

(a) It is unlawful for the owner of a dog engaged in hunting in an area where the owner is authorized to hunt to fail to exercise physical control of the dog, as required by this code or regulations adopted pursuant to this code.

(b) Dogs which are used for hunting which have been vaccinated for rabies in their county of residence in conformity with state law regulating vaccinations in rabies areas are not subject to rabies vaccination requirements of local ordinances outside their county of residence.

The Department also opposes this revision, again indicating it is “arguably a substantive change to the statute that may create a higher standard than the Legislature intended with regard to physical control of a dog while hunting.”<sup>57</sup>

The staff is unsure what the Department means in referring to a “higher standard.” It may be that the Department objects to the language stating expressly that a violation of a controlling statute or regulation “is unlawful.” Perhaps the Department wishes to maintain the possibility that a statute or regulation sets a standard but is not intended to make the violation of the statute “unlawful” and subject to sanction.

If that is the concern, the section could perhaps be revised to read as follows:

The owner of a dog engaged in hunting in an area where the owner is authorized to hunt shall exercise physical control of the dog, as required by this code or regulations adopted pursuant to this code.

**The staff will make further inquiry on this point, and provide additional information in a future memorandum.**

## Reduction Plant as Nuisance (Section 7707)

The tentative recommendation would revise Section 7707 as follows:<sup>58</sup>

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56. Tentative Recommendation, p. 42.

57. Exhibit, p. 6.

58. Tentative Recommendation, p. 60-61.

7707. (a) Any reduction plant in which any fish ~~or any part thereof~~ is used in violation of the provisions of Sections 7700 to 7706, inclusive, 7708, 8151, 8153 to 8157, inclusive, and 8075 to 8080, inclusive, of this code, or in violation of any regulation of the commission, is a nuisance.

(b) Whenever the existence of ~~such~~ a nuisance under subdivision (a) is shown to the satisfaction of the superior court of the county in which the reduction plant is situated, by complaint filed in the name of the people of the State of California, the court may issue a temporary injunction to abate and prevent the continuance or recurrence of ~~such the~~ nuisance. If the existence of a nuisance is established in ~~such that~~ that action, an order of abatement shall be entered as part of the judgment in the case, ~~which order shall direct the closing directing that, for 12 months, of the building or place where such the nuisance was maintained shall be closed, and, during such time, the building or place shall be and remain~~ placed in the custody of the court.

A Note in the tentative recommendation following Section 7707 asked for comment on how to address the fact that Section 7707(a) contains cross-references to repealed provisions (Sections 8151, 8153, 8155, 8156, and 8157) and to existing provisions that are not clearly relevant to the purpose of the cross-reference (Section 8154).

In response, the Department indicates that it has no objection to the deletion of “entirely obsolete” cross-references, but requests that cross-references that have not been repealed continue to appear in the section, “as they arguably deal with the subject matter at issue in Section 7707.”<sup>59</sup>

The staff agrees with the Department that “entirely obsolete” cross-references in Section 7707(a) should be deleted, but is not sure how to determine which cross-references meet that standard. Sometimes, when a section is repealed, its substance is continued elsewhere. In such cases, a cross-reference should be conformed to reflect the replacement provision, rather than simply deleting the reference to the repealed section. **The staff will investigate that possibility and report its findings in a future memorandum.**

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59. Exhibit, p. 7.

## OTHER SUGGESTIONS

### **Relocation of Definition of “Wildlife”**

Section 711.2 defines the term “wildlife” for the purposes of the entire code. Butte County suggests that the definition be located with the other generally applicable definitions of the existing code.<sup>60</sup>

The Commission has already tentatively decided to recommend that relocation, as part of the proposed recodification of the Fish and Game Code.<sup>61</sup> However, there is a technical issue that merits further discussion before that change is made.

By its terms, Section 711.2 applies to all provisions in the Fish and Game Code. But it is silent on whether it governs regulations. If the section were relocated as proposed, it would then be governed by the general rule of construction in Section 2, which provides (with emphasis in bold):

Unless the provisions or the context otherwise requires, the definitions in this chapter govern the construction of this code **and all regulations adopted under this code.**

A staff search of the California Code of Regulations indicates that the term “wildlife” appears well over 100 times in regulations adopted pursuant to the Fish and Game Code. Among those appearances is a single provision defining the term “wildlife” in a manner identical to the definition provided in Section 711.2(a), but only for the purposes of a subchapter relating to administrative actions involving the Office of Spill Prevention and Response.<sup>62</sup>

The staff has no straightforward way of determining whether any regulations adopted pursuant to the Fish and Game Code that use the term “wildlife” were intended to follow the definition in Section 711.2.

**Before making a change that would impose that definition on all of those regulations, the Commission should consider input from interested persons on whether that would be an appropriate change. The staff invites such input.**

### **Solicitation of Comment from Fish and Game Commission**

The Department offers no comment on a handful of provisions that relate to the duties and responsibilities of the Fish and Game Commission. Instead, it

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60. Exhibit, p. 1.

61. Memorandum 2013-50, p. 3; Minutes (Dec. 2013), p. 13.

62. 14 CCR § 873.1(e).

suggests that the Commission seek comment from the Fish and Game Commission on those proposed revisions.<sup>63</sup>

All of the Commission's materials in this study, including the tentative recommendation, are being provided to the Fish and Game Commission for review. **In addition, the staff will contact the Fish and Game Commission to inquire whether they have any comments on the proposed law.**

Respectfully submitted,

Steve Cohen  
Staff Counsel

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63. Exhibit, p. 4.



# BUTTE COUNTY DISTRICT ATTORNEY



**MICHAEL L. RAMSEY**  
District Attorney

**FRANCISCO R. ZARATE**  
Chief Deputy District Attorney

**RICHARD WEST**  
Chief Investigator

July 21, 2014

Steve Cohen  
Staff Counsel  
California Law Review Commission  
4000 Middlefield Rd Room D-2  
Palo Alto, CA 94303-4739

Law Revision Commission  
JUL 24 2014

**RE: California Law Review Commission Draft Tentative Recommendations  
Memorandum 2-14-26 Comments of Butte County District Attorney**

The Butte County District Attorney has a vital interest in the protection of fish and wildlife which reside or travel within the borders of our county. It is with this long tradition and experience with the application of the Fish and Game Code to hunters and others seeking waterfowl, fish, deer, and other game birds that we comment on the proposed draft recommendations.

We support updating and rationalizing the definitions section of the Code found in Chapter 1, General Definitions. The proposal to generally define the term "animal", as including the parts thereof, is a reasonable clarifying change. The definition sections are important to directly understanding the code. The proposal limiting changes to only the term "animals", while excluding the more inclusive term "wildlife", is unduly narrow because the Code uses the more modern phrase "fish and wildlife"<sup>1</sup> to describe the existing universe of covered animals. The term wildlife includes all species of birds, mammals, reptiles, amphibians and plant life. In addition to defining the term animals, a more effective change is to take the recent and comprehensive definition of wildlife from Fish and Game Code section 711.2 and place it in the general definitions section of the code. There is no indication in the legislative history that the placement of section 711.2 (a) limited the scope of the term "wildlife" to a subsection of the Code. A reasonable and effective clarification would be to move the term to the general definitions section of the Fish and Game Code.

Steven Cohen

<sup>1</sup> Fish and Game Code section 711.2 (Statutes of 1990 ch. 1706)

Steven Cohen  
California Law Review Commission  
July 21, 2014

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We support clarification that the protections of the fish and game code apply to amphibians and reptiles as well as fish, mammals and birds. It is an accident of history that game laws were thought necessary as hunting, fishing, and commercial killing of wildlife created shortages or population failures in the various animal species inhabiting the state. Modern statutes have used either a long descriptive string e.g. (birds, mammals, fish, amphibians, reptiles and plants) or the more inclusive term "wildlife" as described in Fish and Game Code section 711.2. We recommend the Commission use a single term "wildlife" as the legislature has defined it, and in addition to defining "animals" move the definition of "wildlife" to the General Definitions section of the code.

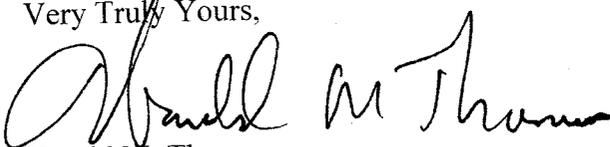
We support the document translation provisions as there are large populations of minority ethnicities among the hunting and fishing public. Unofficial translations into Hmong, Spanish, and Chinese may aide in greater acceptance of conservation goals by those regulated populations.

While we support technical changes, we ask that the definition of fish continue with the existing terms "part, spawn, or ova thereof". Current law protects aquatic insects that live in various life forms described within the term "part thereof". For instance, the larval stage of a caddis fly is a part of the caddis fly life cycle which in various life forms is an important aquatic insect, critical to the food supply of many fish and other aquatic species.

We have concerns that the revision to Fish and Game Code sections 2014 and 2016 will result in substantive changes unintended by the legislative authors. The proposed exceptions of Fish and Game Code section 2014 (e) omit the important modifier "lawful". Only lawful destruction of fish in irrigation canals and lawful killing in the course of agricultural pest control are exempted from the ambit of Fish and Game Code section 2014.

The proposed changes to Fish and Game Code section 2016 will change existing law. Currently the legal prohibition to entering overflowed lands owned by another (Fish and Game Code section 2016) is the existence of posted fencing at specified distances. The proposed language would impose criminal liability on hunters crossing inundated agricultural land with or without seeing a fence. (See FGC section 2016(a)). All that could be required to convict is that flooded land be owned by another, despite the hunter's lack of knowledge that he was traveling over lands properly posted. Infrequently, but periodically, large sections of Butte and neighboring counties are flooded over fence depths and there is a significant problem when the Law Review Commission creates a new crime of hunting ducks from a boat in seasonal floods. This statute has been of considerable controversy over the decades and we suggest no substantive change at this time.

Very Truly Yours,



Harold M. Thomas  
Special Deputy District Attorney



October 3, 2014

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

Subject: Comments on Technical Revisions and Minor Substantive Improvements (Part 1)

Dear Mr. Capozzola:

Regarding the California Law Revision Commission ("CLRC") June 2014 tentative recommendation to make minor technical and substantive improvements to the Fish and Game Code, the Department of Fish and Wildlife has the following comments:

#### Falconry Provisions

In response to your request for comments regarding whether provisions related to falconry should appear in the proposed recodification among provisions relating to hunting or among provisions relating to birds of prey, the Department recommends placement in the areas of the Code dealing with birds of prey, as falconry is not just about hunting. For example, falconers use their birds to keep other birds away from dumps and airports, activities the Department regulates with "nuisance bird abatement" permits.

#### Animal Parts

The Department agrees that adding a definition of "animal parts" to the Fish and Game Code and then removing superfluous references to "parts" in later sections of the Code could improve consistency and clarity. However, there are several sections in which the Department would prefer to maintain the reference to "parts" even with the addition of the "animal parts" definition because we want violations to be readily understood by prosecutors, courts, and juries who deal with these core citing sections on a regular basis without having to consult the new section 80. Those sections are Fish and Game Code §§ 2000, 2002, 7370 and 12012. In addition, the Department has a suggested edit with regard to the proposed "animal parts" definition, as set forth on page 2 of this letter.

#### Regulation of Reptiles and Amphibians

The Department has no specific objection to the CLRC proposed statutory changes that would include reptiles and amphibians in sections of the Fish and Game Code that

otherwise apply to all vertebrates. However, the Department does not presume that every omission of reptiles and/or amphibians from these sections was inadvertent on the part of the legislature. In addition, inserting these terms in sections that also contain the word "fish" exacerbates the redundancy created by the fact that the existing definition of "fish" includes amphibians. It may be useful to present this issue in its entirety to the legislature.

#### Document Translation

The Department has no objection to revisions intended to clarify that Section 7 of the Fish and Game Code does not prohibit the unofficial translation of statements and reports into other languages.

#### Fish and Game Commission

The Department has no comment on the following sections that deal with Fish and Game Commission matters and recommends the CLRC seek comment directly from the Fish and Game Commission prior to proceeding with the proposed changes:

§ 210  
§ 240  
§ 300  
§ 301  
§ 307  
§ 312  
§ 326  
§ 14102

#### Specific Comments

Any underline / strikeout provisions below represent the Department's recommended changes to the CLRC proposed language:

- § 80 (added)

*~~"Unless the provision or context otherwise requires, Except as otherwise required, any provision of this code that applies to a whole animal also applies to a part of the animal."~~*

We suggest this revision because existing Fish and Game Code section 2 already addresses how general definitions are to be construed in the Code in light of context.

- § 1003 (amended)

*"Mammals, birds, and their nests and eggs, fish and their eggs, reptiles, amphibians, mollusks, crustaceans, or any other form of plant or animal life taken*

*under the provisions of a scientific or propagation permit issued pursuant to Section 1002 may be shipped or transported anywhere within or without the state if prior written approval is obtained from the department and the shipment is accompanied by the name, address, and permit number of the person holding the scientific or propagation permit."*

We suggest this revision because scientific / propagation permits may be issued under other Code sections.

- §1053.5 (amended)

We suggest making no change to the existing language of section 1053.5 because the cross reference proposed for deletion is not in error. Subdivision (a) of section 1053 appropriately refers to the non-resident license section.

- § 2000 (amended)

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

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

This is a section in which the Department would prefer to maintain the reference to "parts" even with the addition of the "animal parts" definition because we want violations to be readily understood by prosecutors, courts, and juries who deal with these core citing sections on a regular basis without having to consult the new section 80.

- § 2002 (amended)

*"It is unlawful to possess any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provision of this code, or any regulation adopted pursuant to this code."*

This is a section in which the Department would prefer to maintain the reference to "parts" even with the addition of the "animal parts" definition because we want violations to be readily understood by prosecutors, courts, and juries who deal with these core citing sections on a regular basis without having to consult the new section 80.

We also suggest deleting "of the" to correct a typographical error.

- § 2003 (amended)

The Department recommends against changing the word "challenged" to "disability" in this section because the term "disability" is used elsewhere in the Code to refer to a condition that must be supported by documentation of some kind. It may unduly limit the use of this section to use the same term "disability" here, as the term "challenge" may refer to a broader category of participants.

- § 3005 (amended)

The Department has no objection to the changes in this section, with two exceptions.

First, the CLRC proposal includes several amendments that change the word "avian" to "bird", however this change is made inconsistently throughout the section. The Department recommends either maintaining the existing language or making the change throughout.

Second, existing section 3005(c) reads,

*"(c) Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section."*

The proposed amended language reads,

*"(b) In the absence of evidence that a bird or mammal was taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, proof of possession of a bird or mammal is prima facie evidence that the bird or mammal was taken with a net, pound, cage, trap, set line or wire, or poisonous substance."*

The Department interprets this amendment as an unfavorable substantive change to the evidentiary standard and, therefore, opposes the amendment.

- § 3008 (amended)

The Department opposes the proposed amended language as it is arguably a substantive change to the statute that may create a higher standard than the legislature intended with regard to physical control of a dog while hunting.

- § 7370 (amended)

*(a) It is unlawful to take or possess for commercial purposes, buy or sell, or to offer to buy or sell, any whole a sturgeon, or any part thereof, including, but not limited to, eggs or sturgeon eggs, except as follows:*

(1) *A sturgeon or sturgeon parteggs that are taken or possessed by, and are the cultured progeny of, an aquaculturist who is registered under Section 15101, may be sold or purchased subject to regulations of the commission.*

(2) *A sturgeon or sturgeon parteggs that are taken commercially in another state that permits the sale of the fish and lawfully imported under Section 2363, may be possessed, sold, or purchased.*

(3) The possession of sturgeon or sturgeon parts, purchase, sale, or offer to buy or sell a sturgeon or sturgeon eggs is authorized by Section 7230.

(b) For purposes of this section, it is prima facie evidence that a sturgeon, or parts thereof, is possessed for commercial purposes if the possession of sturgeon is more than two times the sport bag limit.

This is a section in which the Department would prefer to maintain the reference to "parts" even with the addition of the "animal parts" definition because we want violations to be readily understood by prosecutors, courts, and juries who deal with these core citing sections on a regular basis without having to consult the new section 80.

In addition, it is unclear why the CLRC amended this section to add language about purchase, sale, or offers to buy or sell in 7370(a)(3). Section 7230 only allows for possession by the cannery or processor.

- § 7707 (amended)  
The Department has no objection to removing entirely obsolete cross-references, but supports maintaining the cross-references to sections that have not been repealed as they arguably deal with the subject matter at issue in section 7707.

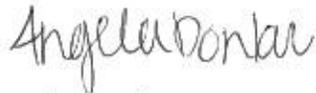
- §12012 (amended)

*(a) Any person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges any amphibian, bird, fish, mammal, or reptile, or part thereof, for profit or personal gain is guilty of a misdemeanor punishable by 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 by both that fine and imprisonment.*

This is a section in which the Department would prefer to maintain the reference to "parts" even with the addition of the "animal parts" definition because we want violations to be readily understood by prosecutors, courts, and juries who deal with these core citing sections on a regular basis without having to consult the new section 80.

Thank you for considering the Department's input as you move through the process of developing proposals for recodification.

Sincerely,

A handwritten signature in cursive script that reads "Angela Donlan".

Angela Donlan  
Senior Staff Counsel