

Memorandum 2015-41

Fish and Game Law: Fishing

The Commission¹ is presently studying a proposed recodification of the Fish and Game Code.² In a series of previous decisions,³ the Commission has provisionally decided to divide the content of the new proposed Fish and Wildlife Code along these lines:

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Hunting, Trapping, and Fishing Generally
 - Part 1. General Provisions
 - Part 2. Hunting
 - Part 3. Trapping
 - Part 4. Fishing Generally
 - Part 5. Sport Fishing
 - Part 6. Commercial Fishing
- Division 6. Types of Animals
 - Part 1. Birds
 - Part 2. Mammals
 - Part 3. Fish
 - Part 4. Reptiles
 - Part 5. Amphibians
- Division 7. Biodiversity
- Division 8. Management of Public Lands and Facilities
- Division 9. Pollution Prevention and Response
- Division 10. Miscellaneous Provisions

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 (April 2013), p. 11; Memorandum 2013-51, pp. 7-8; Minutes (Dec. 2013), p. 14; Memorandum 2015-12, pp. 6-8; Minutes (Apr. 2015), p. 5; Memorandum 2015-41, pp. 3-4; Minutes (Aug. 2015), p. 7.

The staff has previously presented the Commission with drafts of Divisions 1 through 4,⁴ Parts 1 through 5 of Division 5,⁵ and Parts 1 and 2 of Division 6.⁶ This memorandum will begin the presentation of provisions in Part 6 of Division 5 (“Commercial Fishing”), 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, make nonsubstantive stylistic changes, or correct clear defects), the provision’s corresponding Comment, which will be included in any final recommendation, reports that the proposed provision continues the former provision “without substantive change.”⁷ Although summary, this Comment is important, as 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.

4. See Memoranda 2013-12, 2013-13, 2013-32, 2013-35, 2013-37, 2013-38, 2013-50.

5. See Memoranda 2014-8, 2014-18, 2015-30.

6. See Memoranda 2014-38, 2014-48.

7. See Memorandum 2015-12, pp. 10-11; Minutes (Apr. 2015), p. 5.

CONTENT OF DRAFT

The commercial fishing provisions proposed for revision are drawn from Part 3 (commencing with Section 7600) of Division 6 of the Fish and Game Code.

The proposed provisions would be organized as follows:

Part 6. Commercial Fishing and Related Activity

Title 1. General Provisions

Title 2. Commercial Fishing

Title 3. Nets

Title 4. Fishing Lines Generally

Title 5. Traps

Title 6. Other Gear

Title 7. Fishing Related Businesses

Title 8. Landing Taxes

Title 9. Fish Reduction

Title 10. Passenger Fishing Boats

Title 11. Live Fresh-Water Fish for Bait

Title 12. Commercial Fishing Reports

Title 13. Restriction or Closure of Fisheries

Title 14. Aquaculture

Title 15. Special Programs

Title 16. Magnuson-Stevens Fishery Conservation and
Management Act

Title 17. Penalties

Because of the large number of commercial fishing provisions, the material described above will be presented in a series of memoranda. This memorandum presents Titles 1 through 6, with one exception — the provisions on gill and trammel nets are omitted from Title 3. The gill and trammel provisions, which were derived from a citizen initiative, will be presented in a future memorandum.

In addition, the material described above does not include some provisions that relate to specific types of fish. It may make sense for some of those provisions to be included in Part 3 (“Fish”) of Division 6 (“Animals”), rather than in Part 6 (“Commercial Fishing”). The staff will evaluate that placement decision once we have greater familiarity with the other fish-specific provisions of the code.

COURT DECISION OF INTEREST

On September 18, 2015, in *Marilley v. Bonham*, ___ F.3d ___, 2015 DJDAR 10690 (9th Cir. 2015), the Ninth Circuit Court of Appeals ruled that four

California code sections, which require nonresidents to pay higher commercial fishing fees than residents, violate the Privileges and Immunities Clause of the United States Constitution. U.S. Const. art. IV, § 2, cl. 1. The challenged fees included the fee for a commercial fishing license,⁸ the fee for a commercial boat registration,⁹ and two permit fees related to the taking of herring and Dungeness Crab.

The court's 2-1 decision, upholding summary judgment for the nonresident plaintiffs, was based on three findings. First, the court held that the commercial fishing at issue was an activity "sufficiently basic to the livelihood of the Nation" as to trigger application of the Privileges and Immunities Clause. Second, it held that the higher fees imposed on nonresidents seeking to engage in that activity burdened and discriminated against those nonresidents. And finally, while recognizing that the Privileges and Immunities Clause does not preclude disparate treatment of nonresidents when justified by valid reasons, the court concluded that the state in this case had failed to show the disparate treatment was sufficiently related to the permissible objective the state had offered, obtaining compensation for its conservation and enforcement expenditures.

The court also distinguished its holding from a 1978 United States Supreme Court decision that upheld the imposition of higher nonresident fees for elk hunting in Montana.¹⁰ The Supreme Court had held that the activity of elk hunting was "not basic to the maintenance or well-being of the Union," and therefore the state's decision to charge nonresidents more than residents for elk-hunting licenses "simply [did] not fall within the purview of the Privileges and Immunities Clause."¹¹

The staff is not recommending any change to the affected fee provisions to account for the decision in *Marilley*, for two reasons. First, the decision is not yet final. Second, there is more than one way that the Legislature might wish to adjust the statutes to cure the constitutional problem. The decision on how to adjust the law will depend on fiscal considerations that the Commission is not in a position to resolve.

8. See Section 7852.

9. See Section 7881.

10. *Baldwin v. Fish & Game Commission*, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).

11. *Baldwin*, *supra* at 388.

Although the staff has not proposed any statutory revision to reflect the *Marilley* decision, a Staff Note was added after each affected code section. These notes acknowledge the decision and explain that the lack of any conforming revision is intentional.

CONCLUSION

The attached draft represents an initial attempt to consolidate some of the existing commercial fishing provisions. 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.¹² 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

12. See 2014 Cal. Stat. res. ch. 63.

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	7
CHAPTER 2. DEFINITIONS	7
§ 132. “Bait net”	7
§ 133. “Beach net”	7
§ 138. “Bucket trap”	7
§ 152. “Commercial fisher”	8
§ 153. “Commercial fishing entitlement”	8
§ 154. “Commercial fishing license”	9
§ 173. “Deeper nearshore species”	9
§ 203. “General trap permit”	9
§ 217. “Korean trap”	9
§ 233. “Nearshore species”	9
§ 263. “Popup”	10
§ 282. “Round haul net”	10
§ 287. “Set line”	10
§ 288. “Set net”	10
§ 311. “Trawl net”	11
§ 312. “Troll line”	11
§ 313. “Vertical fishing line”	11

§ 314. “Vessel owner”	12
PART 6. COMMERCIAL FISHING AND RELATED ACTIVITY	12
TITLE 1. GENERAL PROVISIONS	12
CHAPTER 1. APPLICATION	12
§ 10000. Application of part	12
§ 10005. Application of other provisions	12
CHAPTER 2. PROHIBITIONS.....	13
§ 10050. Prohibition against use of gear to take fish except as authorized	13
§ 10055. Interference with use of fishing gear	13
TITLE 2. COMMERCIAL FISHING	14
CHAPTER 1. LICENSE AND RELATED ENTITLEMENTS.....	14
Article 1. Requirements.....	14
§ 10100. Activity requiring license.....	14
§ 10105. Possession and display of identification	15
Article 2. Issuance	15
§ 10150. Additional application requirements for license	15
§ 10155. Denial of application based on prior dishonored check	16
§ 10160. Conditions of license or other entitlement	16
§ 10165. Additional conditions for limited entry fishery permit	17
Article 3. Fees.....	17
§ 10200. Fee.....	17
§ 10205. Late fee for renewal after deadline	18
§ 10210. Refund of fee based on death.....	19
§ 10215. Payment of fee by another	19
Article 4. Suspension and Revocation.....	20
§ 10250. Suspension or revocation	20
§ 10255. License revocation or suspension proceeding at commission meeting	20
CHAPTER 2. COMMERCIAL FISHING VESSELS	20
Article 1. Boat Registrations and Other Vessel Permits.....	20
§ 10300. Application of article	20
§ 10305. Activity requiring registration.....	20
§ 10310. Term	21
§ 10315. Fee for registration	21
§ 10320. Refund of fee based on death.....	21
§ 10325. Posting of registration on vessel	22
§ 10330. Issuance of registration number	22
§ 10335. Display of registration number	22
§ 10340. Report of lost, destroyed, or sold vessel	22
Article 2. Obligations and Prohibitions	22
§ 10400. Change of address	22
§ 10405. Additional application requirement for permit or other entitlement.....	23
§ 10410. Required insurance.....	23
§ 10415. Prohibition against multiple entitlements of same type	23
§ 10420. Preparation of fish on commercial fishing vessel for human consumption	23
§ 10425. Take or possession pursuant to sportfishing license	24
§ 10430. Possession of specified fish on board commercial fishing vessel.....	24
Article 3. Fuel Conservation Assistance Program.....	25
§ 10475. Purpose of program.....	25
§ 10480. Report to Legislature.....	25
CHAPTER 3. AIRCRAFT	25
§ 10500. Required registration.....	25

§ 10505. Requirement that registration be carried onboard.....	25
§ 10510. Fee for registration	25
CHAPTER 4. GEOGRAPHIC RESTRICTIONS	26
Article 1. Take	26
§ 10550. Prohibited fishing in Salton Sea, New River, and Alamo River.....	26
Article 2. Out-of-State Delivery of Fish.....	26
§ 10580. Permit to deliver fish out of state	26
Article 3. Far Offshore Fishing	27
§ 10600. “Far offshore fishery”	27
§ 10605. Legislative declaration	28
§ 10610. Landing of fish taken in far offshore fishery	28
§ 10615. Declaration of intended landing	28
§ 10620. Prohibited fishing during declared trip	29
TITLE 3. NETS	29
CHAPTER 1. GENERAL PROVISIONS.....	29
§ 10700. Length of meshes	29
CHAPTER 2. NUISANCE	29
§ 10750. Seizure.....	29
§ 10755. Retrieval of net by department.....	30
§ 10760. Filing of bond by owner.....	30
§ 10765. Exceptions to release of net on bond	31
§ 10770. Petition for forfeiture	31
§ 10775. Disposition of net.....	31
CHAPTER 3. SPECIAL DISTRICT RULES	32
§ 10850. District 1835.....	32
§ 10855. District 1840.....	32
§ 10860. District 1850.....	33
§ 10865. District 1895.....	33
CHAPTER 4. SPECIAL RULES FOR IDENTIFIED WATERS.....	34
§ 10900. Area upstream from Antioch area.....	34
§ 10905. Area in or near Klamath, Smith, Eel, Mad, Van Dusen, or Mattole Rivers	34
CHAPTER 5. SET NETS.....	34
Article 1. General Provisions	34
§ 11000. Markings	34
§ 11005. Breaking strength of footrope	35
§ 11010. Lost net.....	35
CHAPTER 6. GILL NETS AND TRAMMEL NETS [RESERVED]	36
CHAPTER 7. ROUND HAUL NETS.....	36
Article 1. General Provisions [Reserved].....	36
Article 2. Special District Rules	36
§ 11700. District 1705.....	36
§ 11705. District 1725.....	36
§ 11710. District 1740.....	36
§ 11715. District 1770.....	36
§ 11720. District 1775.....	36
§ 11725. District 1780.....	37
§ 11730. District 1785.....	37
§ 11735. District 1790.....	37
§ 11740. District 1800.....	37
§ 11745. District 1820.....	37
§ 11750. District 1825.....	37

§ 11755. District 1830.....37
§ 11760. District 1835.....37
§ 11765. District 1840.....38
§ 11770. District 1845.....39
§ 11775. District 1850.....39
§ 11780. District 1855.....40
§ 11785. District 1860.....40
Article 4. Bait Nets40
 § 11850. Authority of commission40
 § 11855. Prohibited use of rings41
 § 11860. Districts allowing use of bait nets41
 § 11865. District 1840.....41
CHAPTER 9. BEACH NETS41
 § 11900. District 1705.....41
 § 11905. District 1725.....42
 § 11910. District 1740.....42
 § 11915. District 1780.....42
 § 11920. District 1785.....42
 § 11925. District 1790.....42
 § 11930. District 1800.....42
 § 11935. District 1810.....42
 § 11940. District 1815.....42
 § 11945. District 1830.....43
 § 11950. District 1835.....43
CHAPTER 10. TRAWL NETS43
Article 1. General Provisions43
 § 12000. Legislative declaration43
 § 12005. Conformity with federal regulations43
 § 12010. Commission and department authority44
Article 2. Prohibitions45
 § 12050. Mesh size45
 § 12055. Bag or cod-end45
 § 12060. Prohibited roller gear45
 § 12065. Bottom trawling in ocean waters45
 § 12070. Required permit for vessel45
 § 12075. Chafing gear46
Article 3. Special District Rules46
 § 12150. District 1750.....46
 § 12155. District 1770.....46
 § 12160. District 1775.....46
 § 12165. District 1790.....46
 § 12170. District 1825.....47
 § 12175. District 1830.....47
 § 12180. District 1835.....47
 § 12185. District 1840.....47
 § 12190. District 1845.....47
 § 12195. District 1850.....47
 § 12200. District 1855.....47
 § 12205. District 1860.....48
 § 12210. District 1895.....48
Article 4. Special Rules for Identified Waters.....48

§ 12250. Golden Gate Bridge area.....48
§ 12255. Small cod-end mesh in specified area.....48
CHAPTER 11. DIP NETS49
Article 1. General Provisions49
§ 12300. Permitted except where specifically restricted49
Article 2. Special District Rules49
§ 12350. District 1705.....49
§ 12355. District 1715.....49
§ 12360. District 1725.....49
§ 12365. District 1740.....49
§ 12370. District 1750.....49
§ 12375. District 1835.....50
§ 12380. District 1850.....50
CHAPTER 12. BAITED HOOP NETS50
Article 1. General Provisions [Reserved].....50
Article 2. Special District Rules50
§ 12500. District 1830.....50
§ 12505. District 1835.....50
CHAPTER 13. CHINESE SHRIMP NETS.....50
Article 1. General Provisions [Reserved].....50
Article 2. Special Rules for Identified Waters.....50
§ 12600. Golden Gate Bridge area.....50
TITLE 4. FISHING LINES GENERALLY51
CHAPTER 1. GENERAL PROVISIONS.....51
§ 12650. Legislative declaration51
§ 12655. Permitted length51
CHAPTER 2. SPECIAL DISTRICT RULES.....51
§ 12700. District 6.....51
§ 12705. District 1775.....52
§ 12710. District 1790.....53
§ 12715. District 1825.....54
§ 12720. District 1830.....55
§ 12725. District 1835.....56
CHAPTER 3. SET LINES57
Article 1. General Provisions57
§ 12750. Set line57
CHAPTER 4. TROLL LINES58
Article 1. General Provisions58
§ 12800. Troll line.....58
Article 2. Special District Rules58
§ 12850. District 1770.....58
§ 12855. District 1775.....58
§ 12860. District 1790.....58
§ 12865. District 1800.....59
§ 12870. District 1810.....59
§ 12875. District 1815.....59
§ 12880. District 1820.....59
§ 12885. District 1825.....60
§ 12890. District 1830.....60
§ 12895. District 1835.....60
§ 12900. District 1840.....60

TITLE 5. TRAPS60

 CHAPTER 1. GENERAL PROVISIONS60

 § 13000. Inapplicability of chapter to specified traps60

 CHAPTER 2. OTHER REQUIREMENTS60

 § 13050. Incorporated destruction device60

 § 13055. Required maintenance60

 § 13060. Abandonment61

 § 13065. Marking61

 CHAPTER 3. DISTURBANCE OF TRAPS61

 § 13100. Disturbance of trap61

 § 13105. Permit to pull or raise trap61

 § 13110. Publicly employed safety personnel61

 § 13115. Regulations relating to retrieval of commercial crab traps62

 CHAPTER 4. NUISANCE62

 § 13150. Removal62

 § 13155. Seizure63

 § 13160. Retrieval of trap by department63

 § 13165. Filing of bond by owner64

 § 13170. Exceptions to release of trap on bond64

 § 13175. Petition for forfeiture64

 § 13180. Disposition of trap65

TITLE 6. OTHER GEAR65

 CHAPTER 1. GENERAL PROVISIONS65

 § 13250. Slurp guns65

 CHAPTER 2. DEVELOPMENT OF ALTERNATIVE FISHING GEAR65

 § 13300. Issuance of permits65

 § 13305. Revocation or non-renewal of permit66

 § 13310. Request to terminate permit67

DISPOSITION OF FORMER LAW69

DIVISION 1. GENERAL PROVISIONS

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1

CHAPTER 2. DEFINITIONS

2

☞ Staff Notes. (1) As part of the staff’s effort to organize the proposed law so as to make it easier to locate relevant provisions, the staff proposes to generalize all definitional provisions, other than those for which limited application is appropriate, and consolidate them in this introductory title.

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In all instances in which a definitional provision in this chapter would generalize an existing definitional provision, a Staff Note will follow the proposed provision, inviting comment on whether the generalization would be problematic.

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(2) The section numbers assigned to the definitions that follow are placeholders, included only to show relative positioning in the proposed law. Once the draft of this chapter of the proposed law is complete, new standardized section numbers will be assigned to each section in the chapter.

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§ 132. “Bait net”

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132. “Bait net” means a lampara net or round haul type net, the mesh of which is constructed of twine not exceeding Standard No. 9 medium cotton seine twine, or synthetic twine of equivalent size or strength.

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18

Comment. Section 132 generalizes the first sentence of former Fish and Game Code Section 8780(a).

19

☞ Staff Note. Existing Fish and Game Code Section 8780(a) provides a definition of the term “bait net,” for purposes of the chapter in which that section appears. However, the term is used without a corresponding definition elsewhere in the existing code. See existing Fish and Game Code § 10660.

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The staff invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

25

§ 133. “Beach net”

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133. “Beach net” means a net hauled from the water to the beach or shore, and includes a beach seine and a haul seine.

27

28

Comment. Section 133 generalizes former Fish and Game Code Section 8800.

29

☞ Staff Note. Existing Fish and Game Code Section 8800 provides a definition of the term “beach net,” for purposes of the chapter in which that section appears.

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The staff invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

33

§ 138. “Bucket trap”

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138. “Bucket trap” means a plastic bucket of five gallons or less in capacity.

35

Comment. Section 138 generalizes former Fish and Game Code Section 9000.5(a).

1 **Staff Note.** Existing Fish and Game Code Section 9000.5(a) provides a definition of the term
2 “bucket trap,” for purposes of the article in which that section appears.

3 **The staff invites comment on whether it would be problematic to generalize the definition**
4 **so that it applies code-wide.**

5 **§ 152. “Commercial fisher”**

6 152. “Commercial fisher” means a person engaging in an activity for which a
7 commercial fishing license is required pursuant to Section 10100.

8 **Comment.** Section 152 is new, and is added for drafting convenience. It is drawn from former
9 Fish and Game Code Section 7850.

10 **Staff Note.** In general, the staff believes that the laws governing commercial fishing should
11 apply to anyone who is engaged in the regulated activity, regardless of whether that person holds
12 a valid license. That general principle is undermined by the Fish and Game Code’s occasional use
13 of the term “licensed commercial fisherman” in provisions that regulate commercial fishing. Such
14 provisions impliedly only apply to a person who holds a valid commercial fishing license. See,
15 e.g., Sections 8031(a)(4) (““Commercial fisherman” means a person who has a valid, unrevoked
16 commercial fishing license issued pursuant to Section 7850.”).

17 Read literally, such provisions would make some provisions that regulate commercial fishing
18 inapplicable to persons fishing commercially without a valid license. To avoid that result,
19 proposed Section 152 defines the term “commercial fisher” to mean a person who is required by
20 law to have a commercial fishing license (i.e., a person who is engaging in regulated commercial
21 fishing activity). That defined term is then used throughout this portion of the proposed Fish and
22 Wildlife Code, replacing references to a “licensed commercial fisherman.” The staff will make an
23 exception to that practice if it finds that a provision that regulates commercial fishing is clearly
24 intended to make holding a license a necessary substantive element of a rule. In those cases, the
25 term “licensed commercial fisher” would be used.

26 **The staff invites comment on whether the addition of this definition to the proposed law,**
27 **or the substitution of the defined term for references to a “licensed commercial**
28 **fisherman” in provisions of the proposed law, would be problematic.**

29 **§ 153. “Commercial fishing entitlement”**

30 153. “Commercial fishing entitlement” means a commercial fishing license, or
31 any other permit, stamp, or entitlement issued by the department, to take, possess
32 aboard a boat, or land fish for a commercial purpose, but not including the
33 following entitlements:

34 (a) A license issued pursuant to **Article 7 (commencing with Section 8030).**

35 (b) A license issued pursuant to **Article 11 (commencing with Section 8460).**

36 (c) A commercial boat registration or other entitlement authorizing the use of a
37 vessel.

38 **Comment.** Section 153 is new, and is added for drafting convenience.

39 **Staff Note.** Existing Fish and Game Code Sections 7852.1, 7852.2, 7852.25, and 7857
40 refer in slightly different ways to the various entitlements related to commercial fishing to which
41 those provisions apply. Proposed Section 153 would conform and standardize those application
42 provisions, excluding entitlements that generally apply to distinguishable subject matter.

43 **The staff invites comment on the inclusion and wording of proposed Section 153.**

1 § 154. “Commercial fishing license”

2 154. “Commercial fishing license” means a valid, unrevoked commercial fishing
3 license issued pursuant to Chapter 1 (commencing with Section 10000) of Title 1
4 of Part 6.

5 **Comment.** Section 154 is new. It is drawn from former Fish and Game Code Sections
6 8031(a)(4) and 8040.

7 **Staff Note.** Proposed Section 154 is drawn from existing Fish and Game Code Sections
8 8031(a)(4) and 8040, which provide a definition of the term “commercial fisherman,” but only for
9 the articles in which those sections appear.

10 **The staff invites comment on the proposed addition of this definition, and whether it**
11 **would be problematic to generalize the definition so that it applies code-wide.**

12 § 173. “Deeper nearshore species”

13 173. “Deeper nearshore species” means those finfish identified as deeper
14 nearshore species in regulations adopted by the commission pursuant to **Section**
15 **8587.1.**

16 **Comment.** Section 173 generalizes former Fish and Game Code Section 9000.5(b).

17 **Staff Note.** Existing Fish and Game Code Section 9000.5(b) provides a definition of the term
18 “deeper nearshore species,” for purposes of the article in which that section appears.

19 **The staff invites comment on whether it would be problematic to generalize the definition**
20 **so that it applies code-wide.**

21 § 203. “General trap permit”

22 203. “General trap permit” means a valid permit to take fish for a commercial
23 purpose issued pursuant to **Section 9001** that has not been suspended or revoked.

24 **Comment.** Section 203 generalizes former Fish and Game Code Section 9000.5(c).

25 **Staff Note.** Existing Fish and Game Code Section 9000.5(c) provides a definition of the term
26 “general trap permit,” for purposes of the article in which that section appears.

27 **The staff invites comment on whether it would be problematic to generalize the definition**
28 **so that it applies code-wide.**

29 § 217. “Korean trap”

30 217. “Korean trap” means a molded plastic cylinder that does not exceed 6
31 inches in diameter and does not exceed 24 inches in length.

32 **Comment.** Section 217 generalizes former Fish and Game Code Section 9000.5(d).

33 **Staff Note.** Existing Fish and Game Code Section 9000.5(d) provides a definition of the term
34 “Korean trap,” for purposes of the article in which that section appears.

35 **The staff invites comment on whether it would be problematic to generalize the definition**
36 **so that it applies code-wide.**

37 § 233. “Nearshore species”

38 233. “Nearshore species” means those finfish identified as nearshore species in
39 regulations adopted by the commission pursuant to **Section 8587.1.**

40 **Comment.** Section 233 generalizes former Fish and Game Code Section 9000.5(e).

1 **☞ Staff Note.** Existing Fish and Game Code Section 9000.5(e) provides a definition of the term
2 “nearshore species,” for purposes of the article in which that section appears.

3 **The staff invites comment on whether it would be problematic to generalize the definition**
4 **so that it applies code-wide.**

5 **§ 263. “Popup”**

6 263. “Popup” means a mechanism capable of releasing a submerged buoy at a
7 predetermined time.

8 **Comment.** Section 263 generalizes former Fish and Game Code Section 9000.5(f).

9 **☞ Staff Note.** Existing Fish and Game Code Section 9000.5(f) provides a definition of the term
10 “popup,” for purposes of the article in which that section appears.

11 **The staff invites comment on whether it would be problematic to generalize the definition**
12 **so that it applies code-wide.**

13 **§ 282. “Round haul net”**

14 282. “Round haul net” means a circle seine, and includes a purse seine, ring net,
15 half ring net, and lampara net.

16 **Comment.** Section 282 generalizes former Fish and Game Code Section 8750.

17 **☞ Staff Note.** Existing Fish and Game Code Section 8750 provides a definition of the term
18 “round haul net,” for purposes of the article in which that section appears. However, the term is
19 used without a corresponding definition elsewhere in the existing code. See existing Fish and
20 Game Code § 2362.

21 **The staff invites comment on whether it would be problematic to generalize the definition**
22 **so that it applies code-wide.**

23 **§ 287. “Set line”**

24 287. “Set line” means a line used to take fish that is anchored to the bottom on
25 each end and is not free to drift with the tide or current.

26 **Comment.** Section 287 generalizes the parts of former Fish and Game Code Sections 8601 and
27 9029.5 applicable to set lines.

28 **☞ Staff Note.** Existing Fish and Game Code Section 8601 provides a definition of the term “set
29 line,” for purposes of the statutory part in which that section appears. See Fish and Game Code
30 § 7600. Existing Fish and Game Code Section 9029.5 provides the same definition, for purposes
31 of that section.

32 **The staff invites comment on whether it would be problematic to generalize the definition**
33 **so that it applies code-wide.**

34 **§ 288. “Set net”**

35 288. (a) “Set net” means either of the following:

36 (1) A net used to take fish that is anchored to the bottom on each end and is not
37 free to drift with the tide or current.

38 (2) A net placed so that it will catch or impound fish within a bight, bay, or
39 estuary, or against the shore upon the receding of the tide.

40 (b) Notwithstanding subdivision (a), the following nets are not set nets:

41 (1) A fyke net.

1 (2) A shrimp net.

2 (3) A crab net.

3 **Comment.** Section 288 generalizes the part of former Fish and Game Code Section 8601
4 applicable to set nets.

5 **Staff Note.** Existing Fish and Game Code Section 8601 provides a definition of the term “set
6 net,” for purposes of the statutory part in which that section appears. See Fish and Game Code
7 § 7600.

8 **The staff invites comment on whether it would be problematic to generalize the definition**
9 **so that it applies code-wide.**

10 **§ 311. “Trawl net”**

11 311. “Trawl net” means a cone or funnel-shaped net that is towed or drawn
12 through the water by a fishing vessel, and includes any gear appurtenant to the net.

13 **Comment.** Section 311 generalizes the first sentence of former Fish and Game Code Section
14 8830.

15 **Staff Note.** Existing Fish and Game Code Section 8830 provides a definition of the term
16 “trawl net,” for purposes of the statutory Part in which that section appears. See Fish and Game
17 Code § 7600.

18 **The staff invites comment on whether it would be problematic to generalize the definition**
19 **so that it applies code-wide.**

20 **§ 312. “Troll line”**

21 312. “Troll line” means a line with one or more hooks towed by a vessel
22 underway and making way.

23 **Comment.** Section 312 generalizes former Fish and Game Code Section 9025.5(b).

24 **Staff Note.** Existing Fish and Game Code Section 9025.5(b) provides a definition of the term
25 “troll line,” for purposes of the statutory part in which that section appears. See Fish and Game
26 Code § 7600.

27 **The staff invites comment on whether it would be problematic to generalize the definition**
28 **so that it applies code-wide.**

29 **§ 313. “Vertical fishing line”**

30 313. “Vertical fishing line” means a fishing line that is anchored to the ocean
31 bottom at one end and attached at the other end on the surface to a fishing vessel
32 or a buoy.

33 **Comment.** Section 313 generalizes the part of former Fish and Game Code Section 9029.5
34 applicable to a vertical fishing line.

35 **Staff Note.** A part of existing Fish and Game Code Section 9029.5 provides a definition of
36 the term “vertical fishing line,” for purposes of what is referred to as the “subdivision” in which
37 that provision appears. (Section 9029.5 has no subdivisions.)

38 **The staff invites comment on whether it would be problematic to generalize the definition**
39 **so that it applies code-wide.**

1 § 314. “Vessel owner”

2 314. (a) “Vessel owner,” or a reference to an owner of a vessel, means the
3 person or persons designated as the registered owner of a vessel, on a certificate of
4 documentation issued by the United States Coast Guard or on a copy of the vessel
5 registration issued by the vessel registration agency of the state where the owner is
6 a resident.

7 (b) For purposes of this section, the vessel registration agency in California is
8 the Department of Motor Vehicles.

9 **Comment.** Section 314 revises and generalizes former Fish and Game Code Section 7601.

10 **Staff Note.** Existing Fish and Game Code Section 7601 provides a definition of the terms
11 “vessel owner” and “owner,” for purposes of the statutory part in which that section appears. See
12 Fish and Game Code § 7600.

13 **The staff invites comment on the proposed revision of the definition, and whether it**
14 **would be problematic to generalize the definition so that it applies code-wide.**

....

15 PART 6. COMMERCIAL FISHING AND RELATED ACTIVITY

16 TITLE 1. GENERAL PROVISIONS

17 CHAPTER 1. APPLICATION

18 § 10000. Application of part

19 10000. (a) The provisions of this part apply to the taking and possession of fish
20 for any commercial purpose.

21 (b) This part does not apply to activities governed by **Division 12 (commencing**
22 **with Section 15000).**

23 (c) The provisions of this code governing commercial fishing, packing, or
24 processing licenses, reports by persons engaged in the commercial fish industry,
25 and statements required by owners or operators of fishing boats do not apply to the
26 taking, transporting, or selling of live fresh-water fish for bait.

27 **Comment.** Subdivisions (a) and (b) of Section 10000 continues former Fish and Game Code
28 Section 7600 without substantive change.

29 Subdivision (c) continues the fourth paragraph of former Fish and Game Code Section 8460
30 without substantive change.

31 § 10005. Application of other provisions

32 10005. Commercial fishing and related activity are also governed by Part 4
33 (commencing with Section 8500).

34 **Comment.** Section 10005 is new, and added for drafting convenience.

CHAPTER 2. PROHIBITIONS

§ 10050. Prohibition against use of gear to take fish except as authorized

10050. It is unlawful to use or operate, or assist in using or operating, any net, trap, line, spear, or device, other than in connection with angling, in taking fish, except as provided in Chapter 3 or Chapter 4 of this part.

Comment. Section 10050 continues former Fish and Game Code Section 8603 without substantive change.

Staff Notes. (1) Existing Fish and Game Code Section 8603 is located in Part 3 of Division 6 of the existing code. The first section of Part 3 is Section 7600, which provides, “The provisions of this part apply to the taking and possession of fish for any commercial purpose.”

Based on Section 7600, the prohibition in Section 8603 (which would be continued by proposed Section 10500) applies only to the taking or possession of fish *for a commercial purpose*. However, it appears that the Department of Fish and Wildlife may read the prohibition in Section 8603 more broadly, as its 2015-16 *Ocean Sport Fishing* Regulations booklet reminds readers, on page 53, that “It is unlawful to do the following:... Use or possess any net in state waters except as is authorized. (FGC, Section 8603).”

The staff invites comment on whether proposed Section 10050 should be made applicable to both sport fishing and commercial fishing, and relocated to a part of the proposed law applicable to fishing generally.

(2) As written, existing Section 8603 contains a blanket prohibition against the use of any type of net to take a fish, except in connection with angling, or as provided in Chapter 3 or Chapter 4 of Part 3 of Division 6 of the existing code. However, this exception may be too narrow. There are other provisions of the code not located in either of those two chapters that appear to authorize commercial fishers to use nets to take fish in non-angling situations. See, e.g., existing Sections 8183(e) (bait net may be used to take anchovies), 8561(b) (drift gill net of specified size may be used to take shark and swordfish).

The staff invites comment on whether proposed Section 10050 should be revised to resolve that statutory conflict.

(3) In a handful of provisions of the existing code, most of which were enacted in 1957 (including existing Fish and Game Code Section 8603), the undefined terms “appliance” or “apparatus” seem to be used generically to refer to any kind of device. As both terms are presently understood to have somewhat different or more specific meanings, the staff has proposed to substitute the word “device” for both terms (substituting that word in proposed Section 10500 for the term “appliance” in existing Section 8603).

The staff invites comment on whether that substitution is problematic.

§ 10055. Interference with use of fishing gear

10055. (a) It is unlawful to willfully disturb or damage a net, trap, or other device that is being lawfully used to take fish in state waters.

(b) This section does not apply to a department employee engaged in the performance of official duties.

Comment. Section 10055 continues former Fish and Game Code Section 8604 without substantive change.

Staff Notes. (1) Existing Fish and Game Code Section 8604 is located in Part 3 of Division 6 of the existing code. The first section of Part 3 is Section 7600, which provides, “The provisions of this part apply to the taking and possession of fish for any commercial purpose.”

1 Based on Section 7600, the prohibition in Section 8604 (which would be continued by
2 proposed Section 10055) therefore arguably applies *only* to disturbing or damaging gear being
3 used to take fish for a *commercial* purpose. Is that how the provision is understood to apply?

4 **The staff invites comment on whether proposed Section 10055 should apply only to**
5 **disturbing or damaging gear being used for commercial fishing, or whether it should apply**
6 **to all fishing gear.**

7 (2) In a handful of provisions of the existing code, most of which were enacted in 1957
8 (including existing Fish and Game Code Section 8604), the undefined terms “appliance” or
9 “apparatus” seem to be used generically to refer to any kind of device. As both terms are
10 presently understood to have somewhat different or more specific meanings, the staff has
11 proposed to substitute the word “device” for both terms (substituting that word in proposed
12 Section 10055 for the term “apparatus” in existing Section 8604).

13 **The staff invites comment on whether that substitution is problematic.**

14 TITLE 2. COMMERCIAL FISHING

15 CHAPTER 1. LICENSE AND RELATED ENTITLEMENTS

16 Article 1. Requirements

17 § 10100. Activity requiring license

18 10100. (a) Except for persons expressly exempted under this code, no person
19 shall engage in any of the following activities without a commercial fishing
20 license:

21 (1) Using, operating, or assisting in using or operating, any boat, aircraft, net,
22 trap, line, or other device, to take a fish or amphibian, for a commercial purpose.

23 (2) Bringing, or contributing to bringing, a fish or amphibian ashore, for the
24 purpose of selling the fish or amphibian in a fresh state.

25 (3) Materially contributing to the activities on board the commercial fishing
26 vessel.

27 (b) Any person on board a commercial fishing vessel who is not required under
28 subdivision (a) to hold a commercial fishing license shall register his or her
29 presence on board the vessel in a log that is maintained by the owner or operator
30 of the vessel pursuant to the requirements of the department.

31 (c) As used in subdivisions (a) and (b), the term “person” means a natural person
32 16 years of age or greater.

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

34 (1) The holder of a live freshwater bait fish license issued pursuant to **Section**
35 **8460** when taking, transporting, or selling live freshwater fish for bait.

36 (2) A person employed by a fish receiver to unload fish or fish products, or load
37 or unload food and supplies, on or from a commercial fishing boat at a dock.

38 **Comment.** Subdivision (a) of Section 10100 continues former Fish and Game Code Section
39 7850(a) without substantive change.

40 Subdivision (b) continues former Fish and Game Code Section 7850(b) without substantive
41 change.

1 Subdivision (c) continues the first sentence of former Fish and Game Code Section 7850(c)
2 without substantive change.

3 Paragraph (1) of subdivision (d) continues former Fish and Game Code Section 7850(d)
4 without substantive change.

5 Paragraph (2) of subdivision (d) continues former Fish and Game Code Section 7850.5 without
6 substantive change.

7 **☞ Staff Note.** Existing Fish and Game Code Section 7850(c) (which would be continued by
8 proposed Section 10100(c)) provides that the “persons” to whom the section applies do not
9 include “persons who are less than 16 years of age, a partnership, corporation, or association.”
10 This language, if interpreted literally, would indicate that the section may apply to other business
11 entities, such as a limited liability company or trust. See Fish and Game Code Section 67
12 (“person” means “any natural person or any partnership, corporation, limited liability company,
13 trust, or other type of association.”)

14 This application appears inadvertent, as several other sections of the code relating to
15 commercial fishing licenses make clear that the licensee must be a natural person. See, e.g.,
16 Sections 7851 (application for license must indicate applicant’s sex, height, weight, and eye and
17 hair color), 7852.27 (when engaging in licensed activity, licensee must also have in his or her
18 possession a valid driver’s license, identification card, or passport).

19 Proposed Section 10100 would revise Section 7850(c) to indicate that the term “person” as
20 used in the section includes only natural persons.

21 **The staff invites comment on the appropriateness of that revision.**

22 **§ 10105. Possession and display of identification**

23 10105. (a) At all times when engaged in any activity for which a commercial
24 fishing license is required, the licensee shall have in his or her possession, or
25 immediately available to the licensee, a valid driver’s license or identification card
26 issued to him or her by the Department of Motor Vehicles or by the entity issuing
27 driver’s licenses from the licensee’s state of domicile.

28 (b) A current passport may be used in lieu of a valid driver’s license or
29 identification card by a holder of a valid nonresident commercial fishing license
30 issued pursuant to this chapter.

31 (c) The licensee’s driver’s license, identification card or, if applicable, passport
32 shall be exhibited upon demand to any person authorized by the department to
33 enforce this code, or regulations adopted pursuant to this code.

34 **Comment.** Section 10105 continues the part of former Fish and Game Code Section 7852.27
35 applicable to commercial fishing licenses without substantive change.

36 **Article 2. Issuance**

37 **§ 10150. Additional application requirements for license**

38 10150. (a) An applicant for a commercial fishing license must be at least 16
39 years of age on the date the license is issued.

40 (b) An application for a commercial fishing license shall state the applicant’s
41 sex, age, height, weight, the color of eyes and hair, and whether or not the
42 applicant is a citizen of the United States.

1 (c) Nothing in this section affects any other provision of law relating to the
2 employment of minors.

3 **Comment.** Subdivision (a) of Section 10150 continues a part of former Fish and Game Code
4 Section 7852(a) and (b) without change.

5 Subdivision (b) continues former Fish and Game Code Section 7851 without substantive
6 change.

7 Subdivision (c) continues former Fish and Game Code Section 7852(e) without substantive
8 change.

9 **§ 10155. Denial of application based on prior dishonored check**

10 10155. Notwithstanding any other provision of law, an application for the
11 issuance or renewal of a commercial fishing entitlement may be denied by the
12 department if, within the preceding year the applicant for the issuance or renewal
13 has presented a check to the department that was dishonored by the bank upon
14 which the check was drawn, and the person has not reimbursed the department for
15 the amount due plus any dishonored check charges incurred by the department,
16 and paid an additional fee of thirty (\$30) dollars.

17 **Comment.** Section 10155 continues the part of former Fish and Game Code Section 7852.25
18 applicable to licenses and other entitlements related to commercial fishing without substantive
19 change.

20 **§ 10160. Conditions of license or other entitlement**

21 10160. Unless otherwise specified, the following conditions apply to a
22 commercial fishing entitlement:

23 (a) An applicant for a commercial fishing entitlement other than a commercial
24 fishing license shall have a valid commercial fishing license issued pursuant to this
25 chapter that is not revoked or suspended.

26 (b) The person to whom the commercial fishing entitlement is issued shall be
27 present when fish are being taken, possessed aboard a boat, or landed for a
28 commercial purpose.

29 (c) The commercial fishing entitlement shall be in the possession of the person
30 issued the entitlement, or immediately available to that person, at all times when
31 that person is engaged in any activity for which the entitlement is required.

32 (d) A person may not hold more than one individual commercial fishing
33 entitlement of a single type at the same time.

34 (e) Any landing of fish used to qualify for, or renew, a commercial fishing
35 entitlement shall be reported on a landing receipt that is delivered to the
36 department pursuant to **Section 8046**.

37 (f) A person or entity issued a commercial fishing entitlement shall comply with
38 all applicable requirements of **Article 7.5 (commencing with Section 8040)**.

39 (g) The name of the person issued a commercial fishing entitlement authorizing
40 the taking of fish shall be included on the landing receipt for any landing of fish.

41 (h) An applicant for a commercial fishing entitlement shall provide the
42 information required by the department on the application form.

1 (i) A commercial fishing entitlement shall be signed by the holder prior to use.

2 (j) A person whose commercial fishing entitlement to engage in a fishery is
3 suspended or revoked shall not engage in that fishery, and shall not obtain another
4 commercial fishing entitlement that authorizes engaging in that fishery, while the
5 suspension or revocation is in effect.

6 (k) A commercial fishing entitlement is not transferable, unless otherwise
7 expressly specified in this code.

8 (l) A commercial fishing entitlement is valid from April 1 to March 31 of the
9 next following calendar year or, if issued after the beginning of that term, for the
10 remainder of that term.

11 (m) A person who moves or acquires a new address after being issued a
12 commercial fishing entitlement shall notify the department of the old and new
13 addresses within three months of moving or acquiring the new address.

14 **Comment.** Section 10160 continues former Fish and Game Code Section 7857(a), (c)-(k), and
15 (m) without substantive change.

16 **Staff Note.** Proposed Section 10160(h) is intended to restate the first sentence of existing
17 Fish and Game Code Section 7857(h) to improve the clarity of that provision, without changing
18 its substantive effect. The existing provision reads as follows:

19 “An application for a commercial fishing license, permit, or other entitlement shall be made on
20 a form containing the information the department may require.”

21 **The staff invites comment on whether the restatement of this provision in proposed**
22 **Section 10160(h) would substantively change its intended meaning.**

23 **§ 10165. Additional conditions for limited entry fishery permit**

24 10165. In addition to the conditions specified in Section 10160, the following
25 conditions apply to a permit, other than a permit issued pursuant to **Section 8550**,
26 to take, possess aboard a boat, or land fish for commercial purposes in a limited
27 entry fishery, as defined in **Section 8100**:

28 (a) The permit shall be renewed annually.

29 (b) Except as otherwise provided by law, an appeal of a denial of renewal
30 application, or for a waiver of a landing requirement, shall be reviewed and
31 decided by the department.

32 (c) The appeal shall be received by the department or, if mailed, postmarked, on
33 or before March 31 following the permit year in which the appellant last held a
34 valid permit for that fishery.

35 (d) The decision of the department may be appealed to the commission.

36 **Comment.** Section 10165 continues former Fish and Game Code Section 7858 without
37 substantive change.

38 Article 3. Fees

39 **§ 10200. Fee**

40 10200. (a) The fee for a commercial fishing license is as follows:

1 (1) For a resident, a base fee of ninety-five dollars (\$95).

2 (2) For a nonresident, a base fee of two hundred eighty-five dollars (\$285).

3 (b) The base fees specified in this section are applicable to the 2004 license year,
4 and shall be adjusted annually thereafter pursuant to **Section 713**.

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

9 **Comment.** Section 10200 continues former Fish and Game Code Section 7852(a)-(d) without
10 substantive change.

11 **Staff Note.** (1) Proposed Section 10200(a) is intended to restate existing Fish and Game Code
12 Section 7852(a)-(b) to improve the clarity of those provisions, without changing their substantive
13 effect. The existing provisions read as follows:

14 “(a) The department shall issue a commercial fishing license to any resident who is 16 years of
15 age or older, upon payment of a base fee of ninety-five dollars (\$95) for each resident vessel
16 crewmember or resident vessel operator.

17 (b) The department shall issue a commercial fishing license to any nonresident who is 16 years
18 of age or older, upon payment of a base fee of two hundred eighty-five dollars (\$285) for a
19 nonresident vessel crewmember or nonresident vessel operator.”

20 **The staff invites comment on whether the restatement of existing Section 7852(a)-(b) in**
21 **proposed Section 10200(a) would substantively change the intended meaning of the existing**
22 **provisions.**

23 (2) On September 18, 2015, the Ninth Circuit Court of Appeals, in *Marilley v. Bonham*, ___
24 F.3d ___, 2015 DJDAR 10690 (9th Cir. 2015) held that four of California’s commercial fishing
25 provisions that set license or registration fees higher for non-residents than residents, including
26 the fee for a commercial fishing license set by Section 7852, violate the Privileges and
27 Immunities Clause.

28 **As of the date of this draft, this decision was not final. The staff has therefore proposed**
29 **no revision to Section 7852 based on this decision at this time.**

30 **§ 10205. Late fee for renewal after deadline**

31 10205. Notwithstanding any other provision of law, a commercial fishing
32 entitlement for which there is a renewal deadline shall not be renewed after that
33 deadline, except as follows:

34 (a) In addition to the base fee for the entitlement, the department shall assess a
35 late fee for any renewal application that is received after the deadline, according to
36 the following schedule:

37 (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars
38 (\$125).

39 (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars
40 (\$250).


41 (3) Sixty-one days or more after the deadline, a fee of five hundred dollars
42 (\$500).

1 (b) The department shall not waive the applicable late fee. The late fees
2 specified in subdivision (a) are applicable to the 2008 license year, and shall be
3 adjusted annually thereafter pursuant to **Section 713**.

4 (c) The department shall deny any application for renewal received after March
5 31 of the permit year following the year in which the applicant last held a valid
6 permit for that fishery.

7 (d) An applicant who is denied renewal of a late application by the department
8 may submit a written appeal of the denial to the commission, within 60 days of the
9 date of the department's denial. The commission, upon consideration of the
10 appeal, may grant the renewal. If the commission grants the renewal, it shall assess
11 the applicable late fee pursuant to subdivision (a).

12 **Comment.** Section 10205 continues former Fish and Game Code Section 7852.2 without
13 substantive change.

14  **Staff Note.** It is unclear whether the application of existing Fish and Game Code Section
15 7852.2(c) (which would be continued by proposed Section 10205(c)), is intended to be limited to
16 applications for renewal of permits, or is also meant to apply to applications for renewal of any
17 other entitlements.

18 **The staff invites comment on this question.**

19 **§ 10210. Refund of fee based on death**

20 10210. (a) The department may refund the fee paid for a commercial fishing or
21 entitlement to the estate of the deceased holder of the entitlement, if proof is
22 provided by the estate that the death of the holder occurred prior to the opening of
23 the season for which the entitlement was valid.

24 (b) The department may deduct from the refund an amount equal to the cost of
25 issuing the refund, not to exceed twenty-five dollars (\$25).


26 **Comment.** Section 10210 continues the part of former Fish and Game Code Section 7852.1
27 applicable to commercial fishing licenses and other entitlements without substantive change.

28 See also Section 10320 (refund of commercial boat registration fee on death).

29 **§ 10215. Payment of fee by another**

30 10215. Any person, partnership, corporation, limited liability company, or
31 association may pay the fee for a commercial fishing entitlement issued to any
32 person.

33 **Comment.** Section 10215 generalizes the second sentence of former Fish and Game Code
34 Section 7850(c).

35  **Staff Note.** Existing Fish and Game Section 7850(c) provides that business entities can pay
36 for a commercial fishing license for any person. This makes sense, as it allows businesses to pay
37 for licenses for their employees. The staff sees no policy reason why this provision should not be
38 extended to other commercial fishing entitlements, as employees might also be required to obtain
39 those entitlements. Proposed Section 10215 has therefore been generalized to apply to all
40 commercial fishing entitlements.

41 **The staff invites comment on this change.**

1

Article 4. Suspension and Revocation

2 **§ 10250. Suspension or revocation**

3 10250. The commission, after notice and opportunity for hearing, may suspend,
4 revoke, or cancel a commercial fishing entitlement for a period of time to be
5 determined by the commission, for any of the following reasons:

6 (a) The person issued the commercial fishing entitlement was not lawfully
7 entitled to it.

8 (b) A provision of this code, a term of the entitlement, or a regulation adopted
9 pursuant to this code was violated by the person issued the entitlement, his or her
10 agent employee, or person acting under his or her direction or control.

11 (c) A federal law relating to the fishery for which the entitlement was issued was
12 violated by the person issued the entitlement, his or her agent employee, or person
13 acting under his or her direction or control.

14 **Comment.** Section 10250 continues former Fish and Game Code Section 7857(b) without
15 substantive change.

16 **§ 10255. License revocation or suspension proceeding at commission meeting**

17 10255. A proceeding to revoke or suspend a commercial fishing license shall be
18 conducted at a regularly scheduled commission meeting.

19 **Comment.** Section 10255 continues former Fish and Game Code Section 7855 without
20 substantive change.

21 **CHAPTER 2. COMMERCIAL FISHING VESSELS**

22 **Article 1. Boat Registrations and Other Vessel Permits**

23 **§ 10300. Application of article**

24 10300. This article does not apply to a person required to be licensed as a guide
25 pursuant to **Section 2536**.

26 **Comment.** Section 10300 continues former Fish and Game Code Section 7881(e) without
27 substantive change.

28 **§ 10305. Activity requiring registration**

29 10305. Every person who owns or operates a vessel in public waters in
30 connection with fishing operations for profit in this state, or to bring fish into this
31 state, or who, for profit, permits persons to fish from the vessel, shall submit an
32 application for commercial boat registration on forms provided by the department,
33 and shall be issued a registration number.

34 **Comment.** Section 10305 continues former Fish and Game Code Section 7881(a) without
35 substantive change.

1 § 10310. Term

2 10310. A commercial boat registration or other entitlement issued pursuant to
3 this part authorizing the use of a vessel, is valid from April 1 to March 31 of the
4 next following calendar year or, if issued after the beginning of that term, for the
5 remainder of that term.

6 **Comment.** Section 10310 continues the part of former Fish and Game Code Section 7857(k)
7 applicable to commercial boat registrations and related entitlements without substantive change.

8 § 10315. Fee for registration

9 10315. (a) The fee for a commercial boat registration is as follows:

10 (1) For a resident owner or operator of a vessel, a base fee of two hundred fifty
11 dollars (\$250).

12 (2) For a nonresident owner or operator of a vessel, a base fee of seven hundred
13 fifty dollars (\$750).


14 (b) The base fees specified in subdivision (a) are applicable to the 2004 license
15 year, and shall be adjusted annually thereafter pursuant to **Section 713**.

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

20 **Comment.** Subdivision (a) of Section 10315 continues the first sentences of former Fish and
21 Game Code Section 7881(b) and (c) without substantive change.

22 Subdivision (c) continues former Fish and Game Code Section 7881(f) without substantive
23 change.

24 Subdivision (d) continues former Fish and Game Code Section 7881(g) without substantive
25 change.

26  **Staff Note.** On September 18, 2015, the Ninth Circuit Court of Appeals, in *Marilley v.*
27 *Bonham*, ___ F.3d ___, 2015 DJDAR 10690 (9th Cir. 2015) held that four of California's
28 commercial fishing provisions that set license or registration fees higher for non-residents than
29 residents, including the fee for a commercial boat registration set by Section 7881, violate the
30 Privileges and Immunities Clause.

31 **As of the date of this draft, this decision was not final. The staff has therefore proposed**
32 **no revision to Section 7881 based on this decision at this time.**

33 § 10320. Refund of fee based on death

34 10320. (a) The department may refund the fee paid for a commercial boat
35 registration to the estate of the deceased holder of the registration, if proof is
36 provided by the estate that the death of the holder occurred prior to the opening of
37 the season for which the registration was valid.

38 (b) The department may deduct from the refund an amount equal to the cost of
39 issuing the refund, not to exceed twenty-five dollars (\$25).

40 **Comment.** Section 10320 continues the part of former Fish and Game Code Section 7852.1
41 applicable to commercial boat registrations without substantive change.

1 **§ 10325. Posting of registration on vessel**

2 10325. A commercial boat registration shall be carried aboard the vessel at all
3 times, and shall be posted in a conspicuous place.

4 **Comment.** Section 10325 continues the second sentences of former Fish and Game Code
5 Section 7881(b) and (c) without substantive change.

6 **§ 10330. Issuance of registration number**

7 10330. A person issued a commercial boat registration shall also be issued a
8 registration number.

9 **Comment.** Section 10330 continues a part of former Fish and Game Code Section 7881(a)
10 without substantive change.

11 **§ 10335. Display of registration number**

12 10335. (a) A person who owns or operates a vessel used in connection with
13 fishing operations for profit who has been issued a commercial boat registration
14 pursuant to this article shall display, for the purpose of identification, registration
15 number on the vessel in a manner designated by the department shall display on
16 the vessel, for the purpose of identification, the vessel's registration number, in a
17 manner specified by the department.

18 (b) The method of displaying the registration number on the vessel shall be
19 determined by the department after consultation with the Department of Boating
20 and Waterways, taking into consideration the responsibilities and duties of the
21 Department of Boating and Waterways as prescribed in the Harbors and
22 Navigation Code.

23 (c) The registration number is not transferable, and shall be a permanent fixture
24 on the vessel for which it is issued.

25 **Comment.** Section 10335 continues former Fish and Game Code Section 7880 without
26 substantive change.

27 **§ 10340. Report of lost, destroyed, or sold vessel**

28 10340. If a registered vessel is lost, destroyed, or sold, the owner of the vessel
29 shall immediately report the loss, destruction, or sale to the department.

30 **Comment.** Section 10340 continues former Fish and Game Code Section 7881(d) without
31 change.

32 Article 2. Obligations and Prohibitions

33 **§ 10400. Change of address**

34 10400. A person who moves or acquires a new address after being issued a
35 commercial boat registration or other entitlement authorizing the use of a vessel
36 shall notify the department of the old and new addresses within three months of
37 moving or acquiring the new address.

38 **Comment.** Section 10400 continues the part of former Fish and Game Code Section 7857(m)
39 applicable to commercial boat registrations and related entitlements without substantive change.

1 **§ 10405. Additional application requirement for permit or other entitlement**

2 10405. A person who applies for a commercial fishing vessel permit or other
3 entitlement authorizing the use of a vessel for commercial fishing other than a
4 commercial boat registration shall also hold a valid commercial boat registration
5 for that vessel issued pursuant to Article 1 that has not been suspended or revoked.

6 **Comment.** Section 10405 continues former Fish and Game Code Section 7857(l) without
7 substantive change.

8 **§ 10410. Required insurance**

9 10410. An owner of a vessel on which a person who is at least 16 but less than
10 18 years of age, and licensed under Article 1, is working shall obtain, and maintain
11 in full force and effect at all times that a person is working on or about the vessel,
12 a policy of insurance that provides indemnification for accident or injury to that
13 person.

14 **Comment.** Section 10410 restates former Fish and Game Code Section 7852.4 without
15 substantive change.

16 **Staff Note.** Proposed Section 10410 is intended to restate existing Fish and Game Code
17 Section 7852.4 to improve the clarity of that provision, without changing its substantive effect.
18 The existing provision reads as follows:

19 “The owner of a vessel upon which a person who is at least 16, but less than 18, years of age,
20 and who is licensed under Section 7852 is working shall obtain, and maintain in full force and
21 effect at all times that a person is working on or about the vessel, a policy of insurance that
22 provides indemnification to the person licensed under Section 7852 in case of accident or injury
23 while working on or about the vessel.”

24 **The staff invites comment on whether this restatement of existing Fish and Game Code**
25 **Section 7852.4 would substantively change the intended meaning of the existing provision.**

26 **§ 10415. Prohibition against multiple entitlements of same type**

27 10415. Not more than one commercial boat registration, commercial vessel
28 fishing license, or any other entitlement of a single type shall be issued for a single
29 vessel.

30 **Comment.** Section 10415 continues the part of former Fish and Game Code Section 7857(e)
31 applicable to commercial fishing vessels without substantive change.

32 **Staff Note.** Existing Fish and Game Code Section 7857(e) (which would be continued by
33 proposed Section 10415) does not expressly reference a commercial boat registration, although
34 the policy underlying the section appears to apply. Proposed Section 10415 would revise Section
35 7857(e) to add that reference.

36 **The staff invites comment on the appropriateness of that revision.**

37 **§ 10420. Preparation of fish on commercial fishing vessel for human consumption**

38 10420. Notwithstanding any other provision of this part or of Part 3 of Division
39 6, except as provided in Section 10430 or when prohibited by federal law, fish
40 may be prepared for human consumption aboard a commercial fishing vessel only
41 under the following conditions:

1 (a) The fish was taken in compliance with all existing commercial fishing laws
2 and regulations and is of a species and size that can be lawfully taken under
3 sportfishing regulations in the area where taken.

4 (b) The fish was taken incidental to normal commercial fishing operations.

5 (c) The fish is kept separated from other fish, and stored with other foodstuff for
6 consumption by the crew and passengers aboard the vessel.

7 (d) The fish, is not bought, sold, offered for sale, transferred to any other person,
8 landed, brought ashore, or used for any purpose except for consumption by the
9 crew and passengers.

10 (e) The fish is maintained in a condition that its species can be determined, and
11 if a size or weight limitation applies, its size or weight can be determined, until the
12 fish is prepared for immediate consumption.

13 (f) If the fish is filleted, a patch of skin is retained on each fillet as prescribed by
14 the commission in its sportfishing regulations, until the fish is prepared for
15 immediate consumption.

16 (g) Fillets from fish possessed under sportfishing regulations shall be of the
17 minimum length prescribed by commission sportfishing regulations.

18 (h) The quantity of fish prepared may not exceed the aggregate sportfishing bag
19 limit for that fish applicable to the total number of crew members and passengers
20 on board the vessel.

21 **Comment.** Section 10420 continues former Fish and Game Code Section 7856(a)-(e) without
22 substantive change. A reference to “parts” of fish is deleted as superfluous. See Section 85
23 (reference to animal generally includes part of animal).

24 **§ 10425. Take or possession pursuant to sportfishing license**

25 10425. No person shall take or possess any fish pursuant to a sportfishing
26 license while on a commercial fishing vessel engaged in a commercial fishing
27 activity, including going to or from an area where fish are taken for a commercial
28 purpose.

29 **Comment.** Section 10425 continues the fourth sentence of former Fish and Game Code
30 Section 7856(f) without substantive change.

31 **§ 10430. Possession of specified fish on board commercial fishing vessel**

32 10430. (a) Notwithstanding Section 10420, kelp bass, sand bass, spotted bass,
33 yellowfin croaker, spotfin croaker, California corbina, and marlin, shall not be
34 possessed aboard a commercial fishing vessel while that vessel is on a commercial
35 fishing trip.

36 (b) Lobster, salmon, or abalone shall not be possessed aboard a commercial
37 fishing vessel while that vessel is on a commercial fishing trip for preparation for
38 human consumption pursuant to this section unless that lobster, salmon, or abalone
39 is taken and possessed in compliance with all applicable laws pertaining to
40 commercial fishing methods of take, licenses, permits, and size limits.

1 (c) Sturgeon or striped bass shall not be possessed aboard a commercial fishing
2 vessel.

3 **Comment.** Section 10430 continues the first three sentences of former Fish and Game Code
4 Section 7856(f) without substantive change.

5 Article 3. Fuel Conservation Assistance Program

6 § 10475. Purpose of program

7 10475. The California Energy Extension Service of the Office of Planning and
8 Research shall implement a revolving loan fund program to assist low-income
9 fishing fleet operators reduce their energy costs and conserve fuel by providing
10 low-interest loans to those operators.

11 **Comment.** Section 10475 continues former Fish and Game Code Section 9100 without
12 change.

13 § 10480. Report to Legislature

14 10480. Commencing January 1, 1994, and thereafter biennially, the California
15 Energy Extension Service of the Office of Planning and Research shall report to
16 the Legislature on the status of the loan program, including the number and the
17 amounts of loans made, the amount of loans repaid, and a comparison of the ethnic
18 background of the loan recipients with the ethnic background of the low-income
19 fishing fleet operators.

20 **Comment.** Section 10480 continues former Fish and Game Code Section 9101 without
21 change.

22 CHAPTER 3. AIRCRAFT

23 § 10500. Required registration

24 10500. A person who owns or operates an aircraft used in connection with
25 commercial fishing operations in this state shall obtain a commercial aircraft
26 registration for that aircraft from the department.

27 **Comment.** Section 10500 continues the first sentence of former Fish and Game Code Section
28 7892 without substantive change.

29 § 10505. Requirement that registration be carried onboard

30 10505. A commercial aircraft registration issued pursuant to Section 10460 shall
31 be carried aboard the aircraft at all times when the aircraft is used in connection
32 with commercial fishing operations.

33 **Comment.** Section 10505 continues the second sentence of former Fish and Game Code
34 Section 7892 without substantive change.

35 § 10510. Fee for registration

36 10510. The fee for a commercial aircraft registration shall be two hundred
37 dollars (\$200).

1 **Comment.** Section 10510 continues the third sentence of former Fish and Game Code Section
2 7892 without change.

3 **Staff Note.** Unlike many license fee provisions in the existing Fish and Game Code, the fee
4 provision in existing Section 7892 does not expressly provide for annual adjustment pursuant to
5 existing Section 713. **Is this adjustment nevertheless understood to be applicable to this fee?**

6 CHAPTER 4. GEOGRAPHIC RESTRICTIONS

7 Article 1. Take

8 **§ 10550. Prohibited fishing in Salton Sea, New River, and Alamo River**

9 10550. No fish other than carp, or mullet equal to or greater than 14 inches in
10 length, may be taken or possessed by a commercial fisher while fishing in the
11 Salton Sea or the New and Alamo Rivers.

12 **Comment.** Section 10550 continues former Fish and Game Code Section 8667 without
13 substantive change.

14 **Staff Note.** By its terms, existing Section 8667 only applies to fish taken or possessed by a
15 licensed commercial fisher. Read literally, that makes the prohibition inapplicable to a person
16 engaging in commercial fishing operations without a license. It seems unlikely that the provision
17 was intended to include that exemption. Proposed Section 10500 would remove it.

18 **The staff invites comment on whether this revision of existing Section 8667 would change**
19 **the intended substantive meaning of the provision.**

20 Article 2. Out-of-State Delivery of Fish

21 **§ 10580. Permit to deliver fish out of state**

22 10580. The law relating to the subject of control of fishing in state waters when
23 delivery is to points beyond state waters was adopted as an initiative measure at
24 the General Election of November 8, 1938. The reference to Section 845 in the last
25 sentence is to Sections 10750, 10755, and 10770. The initiative measure reads as
26 follows:

27 1110—No person shall use or operate or assist in using or operating in this State
28 or the waters thereof, any boat or vessel used in connection with fishing
29 operations, irrespective of its home port or port of registration, which delivers or
30 by which there is delivered to any place other than within this State any fish,
31 mollusks or crustaceans which are caught in, or taken aboard said boat or vessel
32 from, the waters of the Pacific Ocean within this State, or on the high seas, or
33 elsewhere, unless a permit authorizing the same shall have been issued by the Fish
34 and Game Commission.

35 Where it appears to the commission that such permit will not tend to prevent,
36 impede or obstruct the operation, enforcement, or administration of this code or
37 any provision thereof, and will not tend to result in fish, mollusks or crustaceans in
38 the waters of this State being taken or used otherwise than is authorized by this
39 code, the commission may issue revocable permits under such rules and

1 regulations and upon such terms and conditions as it may prescribe to deliver fish,
2 mollusks or crustaceans by the use of such boat or vessel outside of this State,
3 provided that nothing herein shall authorize the transportation or carrying out of
4 this State or any district thereof, of any fish, mollusks or crustaceans where the
5 same is prohibited by law, and no permit shall be issued which may tend to deplete
6 any species of fish, mollusk or crustacean, or result in waste thereof. Any person
7 who uses or operates or assists in using or operating any boat or vessel in violation
8 of the provisions of this section is guilty of a misdemeanor and such boat or vessel
9 and the net, gear or other equipment of said boat or vessel is a public nuisance and
10 shall be forfeited. It is the duty of every person authorized to make an arrest for
11 the violation of any of the provisions of this code, to seize and keep such boat,
12 vessel, net, gear or other equipment and to report such seizure to the commission.
13 The commission shall thereupon commence, in the superior court of the county or
14 city and county in which or nearest to which the seizure is made, proceedings for
15 forfeiture of the seized property for its use in violation of this section, and such
16 proceeding shall be had in the manner and according to the procedure provided by
17 Section 845 of this code for the forfeiture of nets.

18 **Comment.** Section 10580 continues former Fish and Game Code Section 7891 without
19 substantive change.

20 **Staff Note.** Section 1110 of the Fish and Game Code of 1933 was an initiative statute
21 adopted in 1938, which by its terms did not provide for any subsequent amendment or repeal by
22 the Legislature. As such, the Legislature is constitutionally prohibited from making any
23 substantive change to the provisions of the initiative. See Calif. Const., Art. II, § 10(c), *People v.*
24 *Super. Ct. (Pearson)* 48 Cal. 4th 564, 227 P.3d 858, 107 Cal. Rptr. 3d 265 (2010).

25 In 1957, the Fish and Game Code of 1933 was repealed and the Fish and Game Code of 1957
26 was enacted, which included existing Section 7891 (a section that would be continued by
27 proposed Section 10580). See 1957 Cal. Stat. ch. 456. Existing Section 7891 sets out verbatim the
28 text of former Section 1110, but additionally declares that the reference in that former section to
29 “Section 845 [of the Fish and Game Code of 1933]” in the section’s last sentence “is to Sections
30 8630 to 8632, inclusive, of this code.”

31 The staff at this time makes no finding as to whether textual differences that exist between
32 “Sections 8630 to 8632, inclusive” of the existing Fish and Game Code and Section 845 of the
33 Fish and Game Code of 1933 are sufficiently substantive to require some further revision of
34 proposed Section 10580. In deference to the historic declaration on this issue by the Legislature,
35 proposed Section 10580 as set forth above merely updates the cross-references to existing
36 Sections 8630 to 8632.

37 **The staff invites comment on whether proposed Section 10580 requires any further**
38 **revision based on the issue discussed above.**

39 Article 3. Far Offshore Fishing

40 § 10600. “Far offshore fishery”

41 10600. “Far offshore fishery” means a fishery that lies outside the United States
42 200-mile exclusive economic zone, as that term is defined by paragraph (11) of
43 Section 1802 of Title 16 of the United States Code.

44 **Comment.** Section 10600 continues former Fish and Game Code Section 8111 without
45 change.

1 **☞ Staff Note.** The reference in existing Fish and Game Code Section 8111 (which would be
2 continued by proposed Section 10600) to paragraph (6) of Section 1802 of Title 16 of the United
3 States Code appears to be a drafting error.

4 Paragraph (11) of that section of the United States Code defines the term “exclusive economic
5 zone” as “the zone established by Proclamation Numbered 5030, dated March 10, 1983.” That
6 proclamation in turn indicates the referenced “Exclusive Economic Zone” “extends to a distance
7 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.”
8 See also 33 C.F.R. §151.1504.

9 **§ 10605. Legislative declaration**

10 10605. (a) The Legislature finds and declares that dramatic changes have taken
11 place in the methods and geographic areas of effort by California-based
12 commercial fishers.

13 (b) The Legislature further finds and declares that because the conditions that
14 now exist could not be seen at the time of their inception, some existing
15 regulations are now unreasonably restrictive. In some cases, existing statutes and
16 regulations prohibit California fishers from participating in, or landing in
17 California the primary product or incidental product of, their effort in newly
18 developed far offshore fisheries. This situation is detrimental to the interests of the
19 fishers, fish processors, and consumers of California.

20 **Comment.** Section 10605 continues former Fish and Game Code Section 8110 without
21 substantive change.

22 **§ 10610. Landing of fish taken in far offshore fishery**

23 10610. Notwithstanding any other section of this code, fish taken in a far
24 offshore fishery, which may be lawfully imported, may be landed in this state by
25 persons operating a commercial fishing vessel registered pursuant to Article 1
26 (commencing with Section 10300) of Chapter 2, who took the fish in the far
27 offshore fishery.

28 **Comment.** Section 10610 continues former Fish and Game Code Section 8112 without
29 substantive change.

30 **§ 10615. Declaration of intended landing**

31 10615. (a) Prior to departure from any port in the United States for the purpose
32 of taking fish in a far offshore fishery, the operator of any vessel landing fish in
33 California that will be taken in the far offshore fishery shall file a declaration of
34 that intention with the department, on forms prescribed by the department.

35 (b) The declaration shall be valid when signed by the vessel operator and
36 completed with information prescribed by the department.

37 (c) Upon completion of the trip and within 12 hours of arrival at a port in this
38 state, the operator of the vessel shall complete and submit the return portion of the
39 declaration to the department.

40 (d) This section does not apply to a commercial fisher who uses or possesses
41 only troll lines, or gear for angling for the taking or possession of albacore only.

42 **Comment.** Section 10615 continues former Fish and Game Code Section 8113 without

1 substantive change.

2 **§ 10620. Prohibited fishing during declared trip**

3 10620. It is unlawful for the operator of a vessel operating under authority of
4 this article to fish in, or land fish from, any waters within the United States 200-
5 mile exclusive economic zone, as that term is defined by paragraph (11) of Section
6 1802 of Title 16 of the United States Code, during any trip for which the operator
7 filed a declaration with the department to fish in a far offshore fishery.

8 **Comment.** Section 10620 continues former Fish and Game Code Section 8114 without
9 substantive change.

10 TITLE 3 . NETS

11 CHAPTER 1. GENERAL PROVISIONS

12 **§ 10700. Length of meshes**

13 10700. The length of the meshes of a net shall be determined by taking at least
14 four meshes and measuring them inside the knots or, in the case of knotless nets,
15 inside the points at which the meshes are joined while they are simultaneously
16 drawn closely together.

17 **Comment.** Section 10700 continues former Fish and Game Code Section 8602 without
18 substantive change.

19 CHAPTER 2. NUISANCE

20 **§ 10750. Seizure**

21 10750. (a) A net used for taking fish in violation of this code is a public
22 nuisance. It is the duty of every person authorized to make an arrest for a violation
23 of this code governing the use of nets to take fish to seize and keep the net, and
24 report the seizure to the department.

25 (b) In lieu of a physical seizure of a net pursuant to subdivision (a), a person
26 authorized to make an arrest for a violation of any provision of this code may
27 attach to a net used for taking fish in violation of this code a tag of metal or other
28 material, which shall be furnished by the department for that purpose. The tag
29 shall be impressed or printed with language stating that the net to which it is
30 attached has been seized by the department as a public nuisance.

31 (c) Attaching a tag pursuant to subdivision (b) shall be a seizure within the
32 meaning of this section.

33 (d) The following acts are misdemeanors:

34 (1) Removal of a tag attached pursuant to subdivision (b), unless authorized by
35 the department.

36 (2) Using a net tagged pursuant to subdivision (b) for fishing purposes, unless
37 authorized by the department or by the superior court.


1 **Comment.** Subdivision (a) of Section 10750 continues the part of the first paragraph of former
2 Fish and Game Code Section 8630 applicable to nets without substantive change. See also
3 Section 13155 (seizure of trap as public nuisance).

4 Subdivisions (b)-(d) continue former Fish and Game Code Section 8631 without substantive
5 change.

6 **§ 10755. Retrieval of net by department**

7 10755. Within three days after the department has been notified in writing that a
8 vessel carrying a seized net has arrived in port, the department may remove the net
9 from the vessel, unless the owner has filed a bond in accordance with Section
10 8633. The notice shall be sufficient when delivered to the office of the department
11 nearest to the port at which the vessel has arrived.

12 **Comment.** Section 10755 continues former Fish and Game Code Section 8632 without
13 substantive change.

14  **Staff Note.** The intended meaning of the second sentence of existing Section 8632, indicating
15 that notice to the department of the arrival of a vessel carrying a seized net “is sufficient” when
16 delivered to the nearest department office, is unclear. Is this sentence intended to *require* that the
17 notice be delivered to that office, or merely identify that delivery as one way in which the
18 department may be notified?

19 **The staff invites comment on the meaning of this sentence.**


20 **§ 10760. Filing of bond by owner**

21 10760. (a) When a net is seized pursuant to this article, the owner or any other
22 person otherwise entitled to possession of the net may apply to the superior court
23 of the county or city and county in which the seizure was made, or the county or
24 city and county of which the claimant is a resident, for leave to file a bond and
25 regain possession of the net, during the pendency of any proceeding for forfeiture
26 of the net.

27 (b) The bond shall be in an amount determined by the judge to be the actual
28 value of the net at the time of its release, and shall be conditioned on the transfer
29 of the net to the custody of the department, if the net is later ordered forfeited.

30 (c) The bond shall be filed within three days after the seizure of the net. Upon
31 filing the bond, the person on whose behalf it is given shall be put in possession of
32 the net, and may use the net until it is ordered forfeited by a judgment of the court.

33 **Comment.** Section 10760 continues former Fish and Game Code Section 8633 without
34 substantive change.

35  **Staff Note.** The intended application of the requirement in existing Fish and Game Code
36 Section 8634 that the specified bond “shall be filed within three days after the seizure of the net”
37 appears impractical. It seems reasonably possible that the owner of a net that had been left
38 unattended might not even realize the net had been seized until some number of days after the
39 seizure. Moreover, any net owner seeking return of the net must first apply to a court for leave to
40 file a bond, and then wait for the court to approve the application and set the amount on the bond,
41 a process that could alone consume more than three days.

42 **The staff invites comment on this issue, and whether the stated requirement should be**
43 **revised.**

1 § 10765. Exceptions to release of net on bond

2 10765. Notwithstanding Section 10760, a net seized pursuant to Section 10750
3 as illegal because of its size, manner of construction, materials used in its
4 construction, or configuration of its parts is presumed to be contraband, and shall
5 not be returned pending forfeiture, unless it can be and is modified to eliminate the
6 condition of illegality. This subdivision does not apply to a net seized pursuant to
7 Section 10750 for illegal use.

8 (b) Notwithstanding subdivision (a), any net seized pursuant to Section 10750
9 that is needed for evidence may be held for evidence.

10 **Comment.** Section 10765 continues the part of former Fish and Game Code Section 8635
11 applicable to nets without substantive change.

12 § 10770. Petition for forfeiture

13 10770. (a) The department may commence proceedings in the superior court of
14 the county or city and county in which the seizure is made by petitioning the court
15 for a judgment forfeiting the net.

16 (b) Upon the filing of the petition, the clerk of the court shall fix a time for a
17 hearing, and cause notices to be posted for 14 days in at least three public places in
18 the place where the court is held, setting forth the substance of the petition and the
19 time and place fixed for its hearing.

20 (c) At that time, the court shall hear and determine the proceeding and, upon
21 proof that the net was used in violation of this code, shall order it forfeited.

22 **Comment.** Section 10770 continues the first three sentences of the second paragraph of former
23 Fish and Game Code Section 8630 without substantive change.

24 **Staff Notes.** (1) The second paragraph of existing Fish and Game Code Section 8630 does not
25 appear to impose any affirmative obligation on the department to file a petition for forfeiture of a
26 seized net within any time period, or even at all. In addition, the code does not appear to authorize
27 an owner to bring an action *challenging* the seizure of a net, in order to establish that the net
28 should *not* be forfeited. Those two circumstances together appear to allow for the possibility that
29 a seizure could effectively become a forfeiture, without any opportunity for judicial review.

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

31 (2) Section 8630 requires court clerks, following the filing of a petition to forfeit a seized net,
32 to post notice of the petition and the hearing on the petition “in at least three public places in
33 places where the court is held.”

34 **The staff invites comment on whether this provision should be revised to provide more**
35 **specific direction to court clerks, or better apprise net owners of the commencement of a**
36 **forfeiture proceeding.**

37 § 10775. Disposition of net

38 10775. (a) When a net is seized pursuant to this article and the owner or any
39 other person otherwise entitled to possession of the net has filed a bond and
40 regained possession of the net, the person in possession of the net, if the net is
41 ordered forfeited pursuant to a judgment of the court, shall deliver the net to the
42 department by placing in a warehouse or storage designated by the department.

43 (b) A net that is ordered forfeited shall be sold or destroyed by the department.

1 The proceeds from those sales shall be paid into the Fish and Game Preservation
2 Fund.

3 **Comment.** Subdivision (a) of Section 10775 continues former Fish and Game Code Section
4 8634 without substantive change.

5 Subdivision (b) continues the fourth and fifth sentences of the second paragraph of former Fish
6 and Game Code Section 8630 without substantive change.

7 CHAPTER 3. SPECIAL DISTRICT RULES

8 § 10850. District 1835

9 10850. Notwithstanding any other provision in this title, in District 1835, the use
10 of a net, other than a dip net as provided by Chapter 11, is prohibited within 750
11 feet of any pier, wharf, jetty, or breakwater.

12 **Comment.** Section 10850 restates the part of former Fish and Game Code Section 8660
13 applicable to former Fish and Game District 19 without substantive change.

14 **Staff Notes.** (1) Section 10850 is intended to restate the part of existing Fish and Game Code
15 Section 8660 applicable to existing Fish and Game District 19 to improve the clarity of that
16 provision, without changing its substantive effect. The existing provision reads as follows:

17 “8660. Nothing in this chapter authorizing the use of nets in District 19 or 19A shall authorize
18 the use of any net within 750 feet of any pier, wharf, jetty, or breakwater, except that dip nets
19 may be used subject to the provisions of Section 8870.”

20 Although the existing provision on its face does not affirmatively prohibit the use of any net in
21 District 19, when considered together with existing Section 8603 (blanket prohibition on use of
22 nets to take fish except as specified), that appears to be the intended meaning.

23 **The staff invites comment on whether the restatement of this provision in proposed
24 Section 10850 would substantively change its intended meaning.**

25 (2) Is Section 8660 intended to prohibit the use of a net in District 19 *in connection with*
26 *angling*? Cf. Existing Section 8603 (which would be continued by proposed Section 10500),
27 which excepts use of a net in connection with angling from a general prohibition against use of
28 nets unless authorized.

29 **The staff invites comment on this question.**

30 § 10855. District 1840

31 10855. (a) Notwithstanding any other provision in this title, in District 1840, the
32 use of a net is prohibited within 750 feet of any pier, wharf, jetty, or breakwater.

33 (b) Except as provided in subdivision (a), a vessel in District 1840 may carry a
34 net across the district to open water outside the district.

35 (c) Notwithstanding subdivision (b), a vessel carrying a net may enter a harbor
36 in District 1840 only in cases of distress or emergency.

37 **Comment.** Section 10855 combines and restates the parts of former Fish and Game Code
38 Section 8660 and 8661 applicable to former Fish and Game District 19A, without substantive
39 change.

40 **Staff Notes.** (1) Proposed Section 10855 is intended to combine and restate the parts of
41 existing Fish and Game Code Sections 8660 and 8661 applicable to existing Fish and Game
42 District 19A to improve the clarity of those provisions, without changing their substantive effect.
43 The existing provisions read as follows:

1 “8660. Nothing in this chapter authorizing the use of nets in District 19 or 19A shall authorize
2 the use of any net within 750 feet of any pier, wharf, jetty, or breakwater, except that dip nets
3 may be used subject to the provisions of Section 8870.”

4 “8661. Vessels may carry nets across Districts 19A and 20 to open water outside those
5 districts. Vessels carrying nets may enter harbors in Districts 19A and 20 only in cases of distress
6 or emergency.”

7 **The staff invites comment on whether the combining and restatement of these provisions
8 would cause any substantive change in their meaning.**

9 (2) In several provisions of the existing Fish and Game Code, including existing Section 8661,
10 the undefined terms “vessel” or “boat” are used with no apparent distinction in intended meaning.

11 **The staff invites comment on whether or when the two terms are intended to have
12 different meanings, and whether or when the use of one of the two terms can be
13 discontinued to avoid an inference of intended different (but unstated) meaning.**

14 (3) Is Section 8660 intended to prohibit the use of a net in District 19A *in connection with*
15 *angling*? Cf. Existing Section 8603 (which would be continued by proposed Section 10500),
16 which excepts use of a net in connection with angling from a general prohibition against use of
17 nets unless authorized.

18 **The staff invites comment on this question.**

19 **§ 10860. District 1850**

20 10860. (a) A vessel in District 1850 may carry any net across the district to open
21 water outside the district.

22 (b) Notwithstanding subdivision (a), a vessel carrying a net may enter a harbor
23 in District 1850 only in cases of distress or emergency.

24 **Comment.** Section 10860 restates the part of former Fish and Game Code Section 8661
25 applicable to former District 20 without substantive change.

26 **Staff Note.** Proposed Section 10860 is intended to restate the parts of existing Fish and Game
27 Code Section 8661 applicable to existing Fish and Game District 20 to improve the clarity of that
28 provision, without changing its substantive effect. The existing provision reads as follows:

29 “8661. Vessels may carry nets across Districts 19A and 20 to open water outside those
30 districts. Vessels carrying nets may enter harbors in Districts 19A and 20 only in cases of distress
31 or emergency.”

32 **The staff invites comment on whether the combining and restatement of these provisions
33 would cause any substantive change in their meaning.**

34 **§ 10865. District 1895**

35 10865. In District 1895, a net may not be used within 750 feet of any pier or
36 dock, except for a bait net used to capture live bait and lobster traps authorized for
37 use pursuant to **Section 9010**.

38 **Comment.** Section 10865 continues former Fish and Game Code Section 8665 without
39 substantive change.

40 **Staff Note.** It is not clear why existing Fish and Game Code Section 8665 refers to a lobster
41 trap. The section governs “nets,” and a lobster trap is generally treated as a “trap,” rather than a
42 “net.” See, e.g., existing Fish and Game Code Section 9010. **Can the reference to lobster traps
43 be deleted as unnecessary?**

CHAPTER 4. SPECIAL RULES FOR IDENTIFIED WATERS

§ 10900. Area upstream from Antioch area

10900. No gill net, trammel net, or fyke net may be possessed on a boat in the waters of any district lying upstream from a line drawn between Antioch Point and the westerly tip of Kimball Island and from a line drawn from Point Sacramento across the stream and touching the most easterly point on Montezuma Island.

Comment. Section 10900 continues former Fish and Game Code Section 8663 without substantive change.

§ 10905. Area in or near Klamath, Smith, Eel, Mad, Van Dusen, or Mattole Rivers

10905. (a) A net found in or within 500 feet of the Klamath, Smith, Eel, Mad, Van Dusen, or Mattole Rivers, or their tributaries, is prima facie evidence that the owner or person in possession of the net is or has been using the net unlawfully.

(b) This section does not apply to the following nets:

(1) A trawl or drag net that is being transported.

(2) A net found in District 1770 or 1775.

Comment. Section 10905 continues former Fish and Game Code Section 8664 without substantive change.

Staff Note. In a criminal prosecution for unlawful use of a net, the prima facie evidence rule in existing Fish and Game Code Section 8664 (which was enacted in 1957) might be found unconstitutional, based on modern authority holding that a presumption in a criminal statute may not relieve the prosecution of its burden of proving each element of a charged offense beyond a reasonable doubt. See *People v. Roder*, 33 Cal. 3d 491, 658 P.2d 1302, 189 Cal. Rptr. 501 (1983).

On the other hand, the prima facie evidence rule might well be proper in proving that a net is a nuisance for the purpose of in a civil forfeiture proceeding.

The staff invites comment on whether proposed Section 10905 should be revised so that it only applies in a civil forfeiture proceeding.

CHAPTER 5. SET NETS

Article 1. General Provisions

§ 11000. Markings

11000. (a) A set net shall be marked at both ends with buoys displaying above their waterlines, in numerals at least 2 inches high, the commercial fishing license identification number of the owner of the net.

(b) Each piece or panel of a set net shall be marked along the corkline of the net, in a manner determined by the department to adequately identify the net, with the commercial fishing license identification number of the owner of the net. The distance between the markings shall not exceed 45 fathoms.

Comment. Subdivision (a) of Section 11000 continues the part of former Fish and Game Code Section 8601.5(a) applicable to set nets without substantive change.

Subdivision (b) continues the first two sentences of former Fish and Game Code Section 8601.5(b) without substantive change.

1 **Staff Notes.** (1) Existing Fish and Game Code Sections 8601.5(a) (and (b) both reference “the
2 fisherman’s identification number.” Existing Fish and Game Code Section 9029(c) provides that,
3 for purposes of Section 8601.5, “fisherman’s identification number” means the number of the
4 person’s commercial fishing license issued pursuant to Section 7850.” **Proposed Section 11000**
5 **would incorporate that clarification.**

6 (2) Is the “fisherman” in the phrase “fisherman’s identification number” intended to be the
7 commercial fisher who *owns* the net, or the commercial fisher *fishing* with the net? Because much
8 of the remainder of Section 8601.5 appears to focus substantially on the responsibility of the
9 owner of the net, the staff reads these provisions as intended to identify the owner of the net,
10 rather than the user, and proposed Section 11000(a) and (b) would expressly reflect that
11 interpretation.

12 **The staff invites comment on the appropriateness of this revision.**

13 **§ 11005. Breaking strength of footrope**

14 11005. The footrope (leadline) of any set net shall have a breaking strength of at
15 least 50 pounds less than the combined breaking strength of the headrope and
16 corkline.

17 **Comment.** Section 11005 continues former Fish and Game Code Section 8601.6(a) without
18 substantive change.

19 **§ 11010. Lost net**

20 11010. (a) If a person is unable to recover a set net or portion of a set net, the
21 person shall contact one of the department offices located in the cities of Belmont,
22 Monterey, Los Alamitos, or San Diego, not later than 72 hours after returning to
23 port following the loss, and shall report all of the following information:

24 (1) The date and time when the net was lost.

25 (2) The location, including depth, where the net was lost.

26 (3) A description of the lost net, including the mesh size, length, height, and
27 target species, and whether anchors remain attached to the net.

28 (4) The name and commercial fishing license identification number of the owner
29 of the net.

30 (5) The name and commercial fishing license identification number of the
31 person fishing with the net, if different from the owner of the net.

32 (6) The name and commercial boat registration number of the vessel from which
33 the lost net was being fished.

34 (b) If the lost or abandoned net is recovered by the department or persons
35 designated by the department, the commission may require the owner of the lost or
36 abandoned net to pay for all recovery costs.

37 (c) The commission may revoke the owner’s set net permit issued pursuant to
38 **Section 8681** for failure to comply with this subdivision.

39 **Comment.** Subdivision (a) of Section 11010 continues former Fish and Game Code Section
40 8601.5(c) without substantive change.

41 Subdivision (b) continues the third sentence of former Fish and Game Code Section 8601.5(b)
42 without change.

43 Subdivision (c) continues the fourth sentence of former Fish and Game Code Section 8601.5(b)
44 without substantive change.

1 **☞ Staff Note.** Existing Fish and Game Code Section 8601.5(c)(4) and (5) both reference a
2 “fisherman’s identification number.” Based on a reference in Section 8601.5(c)(6) to what is
3 described as a “California Fish and Game number” of an identified *vessel*, the staff reads the
4 reference to an identification number in Sections 8601.5(c)(4) and (5) as referring to a
5 commercial fishing license identification number.

6 **The staff invites comment on whether that interpretation is correct.**

7 CHAPTER 6. GILL NETS AND TRAMMEL NETS [RESERVED]

8 CHAPTER 7. ROUND HAUL NETS

9 Article 1. General Provisions [Reserved]

10 Article 2. Special District Rules

11 **§ 11700. District 1705**

12 11700. In District 1705, a round haul net shall not be possessed on a boat.

13 **Comment.** Section 11700 continues the part of former Fish and Game Code Section 8751
14 applicable to former Fish and Game District 1 without substantive change.

15 **§ 11705. District 1725**

16 11705. In District 1725, a round haul net shall not be possessed on a boat, except
17 in the part of the district lying within Marin County.

18 **Comment.** Section 11705 continues the part of former Fish and Game Code Section 8751
19 applicable to former Fish and Game District 2 without substantive change.

20 **§ 11710. District 1740**

21 11710. In District 1740, a round haul net shall not be possessed on a boat, except
22 within the boundaries of Moss Landing Harbor District.

23 **Comment.** Section 11710 continues the part of former Fish and Game Code Section 8751
24 applicable to former Fish and Game District 3 without substantive change.

25 **§ 11715. District 1770**

26 11715. In District 1770, purse nets and round haul nets may be used.

27 **Comment.** Section 11715 continues the part of former Fish and Game Code Sections 8752
28 applicable to former Fish and Game District 6 without change.

29 **☞ Staff Note.** It is the staff’s understanding that a purse net is one type of round haul net. **If this**
30 **is correct, can the separate reference to purse nets in proposed Section 11715 and similarly**
31 **worded provisions that follow be deleted as superfluous?**

32 **§ 11720. District 1775**

33 11720. In District 1775, purse nets and round haul nets may be used.

34 **Comment.** Section 11720 continues the part of former Fish and Game Code Sections 8752
35 applicable to former Fish and Game District 7 without change.

1 § 11725. District 1780

2 11725. In District 1780, purse nets and round haul nets may be used.

3 **Comment.** Section 11725 continues the part of former Fish and Game Code Sections 8752
4 applicable to former Fish and Game District 8 without change.

5 § 11730. District 1785

6 11730. In District 1785, purse nets and round haul nets may be used.

7 **Comment.** Section 11730 continues the part of former Fish and Game Code Sections 8752
8 applicable to former Fish and Game District 9 without change.

9 § 11735. District 1790

10 11735. In District 1790, purse nets and round haul nets may be used.

11 **Comment.** Section 11735 continues the part of former Fish and Game Code Sections 8752
12 applicable to former Fish and Game District 10 without change.

13 § 11740. District 1800

14 11740. In District 1800, purse nets and round haul nets may be used.

15 **Comment.** Section 11740 continues the part of former Fish and Game Code Sections 8752
16 applicable to former Fish and Game District 11 without change.

17 § 11745. District 1820

18 11745. In District 1820, purse nets and round haul nets may be used.

19 **Comment.** Section 11745 continues the part of former Fish and Game Code Sections 8754
20 applicable to former Fish and Game District 16 without change.

21 § 11750. District 1825

22 11750. In District 1825, purse nets and round haul nets may be used.

23 **Comment.** Section 11750 continues the part of former Fish and Game Code Sections 8754
24 applicable to former Fish and Game District 17 without change.

25 § 11755. District 1830

26 11755. In District 1830, purse nets and round haul nets may be used.

27 **Comment.** Section 11755 continues the part of former Fish and Game Code Sections 8754
28 applicable to former Fish and Game District 18 without change.

29 § 11760. District 1835

30 11760. (a) In District 1835, purse nets and round haul nets may be used, except
31 as otherwise provided in this section.

32 (b) Purse seines or ring nets may not be used in that portion of the district lying
33 within three miles offshore from the line of the high-water mark along the coast of
34 Orange County from sunrise Saturday to sunset Sunday from May 1 to September
35 10, inclusive.

36 (c) Purse seine or ring nets may not be used from May 1 to September 10,
37 inclusive, in the following portions of the district:

1 (1) Within a two-mile radius of Dana Point.

2 (2) Within a two-mile radius of San Mateo Point.

3 (3) Within two miles offshore from the line of the high-water mark along that
4 portion of the coast of Orange County lying between the northernmost bank of the
5 mouth of the Santa Ana River and a point on that coast six miles south therefrom.

6 (d) Subdivisions (b) and (c) do not apply to the use of a round haul net to take
7 fish for use or sale as live bait. It is unlawful to buy, sell, or possess any dead fish
8 taken under the authority of this subdivision, in any place of business where fish
9 are bought, sold, or processed.

10 (e) A bait net may not be used in the district in violation of Section 11855.

11 **Comment.** Section 11760(a)-(c) continues the part of former Fish and Game Code Section
12 8754 applicable to former Fish and Game District 19 without substantive change.

13 Subdivision (d) continues the part of former Fish and Game Code Section 8757 applicable to
14 former Fish and Game District 19 without substantive change.

15 Subdivision (e) continues the part of the second sentence of former Fish and Game Code
16 Section 8780(a) applicable to former Fish and Game District 19 without substantive change.

17 **Staff Note.** Proposed Section 11760(a) is intended to combine and restate the parts of existing
18 Fish and Game Code Sections 8754 and 8757 that apply to existing Fish and Game District 19, to
19 improve the clarity of those provisions without changing their substantive effect. The existing
20 provisions read as follows:

21 “8754. In Districts 16, 17, 18, and 19, purse and round haul nets may be used, except that purse
22 seines or ring nets may not be used in that portion of District 19 lying within three miles offshore
23 from the line of the high-water mark along the coast of Orange County from sunrise Saturday to
24 sunset Sunday from May 1 to September 10, inclusive.

25 Purse seine or ring nets may not be used from May 1 to September 10, inclusive, in the
26 following portions of District 19:

27 (a) Within a two-mile radius of Dana Point.

28 (b) Within a two-mile radius of San Mateo Point.

29 (c) Within two miles offshore from the line of the high-water mark along that portion of the
30 coast of Orange County lying between the northernmost bank of the mouth of the Santa Ana
31 River and a point on that coast six miles south therefrom.”

32 “8757. Notwithstanding Section 8661, and in addition to Sections 8754, 8755, and 8780, round
33 haul nets may be used to take fish in those portions of Districts 19 and 20 that are closed to the
34 use of round haul nets by Sections 8754 and 8755 and in Districts 19A and 19B, but only for use
35 or sale of those fish for live bait and subject to the following restrictions:

36 (a) In Districts 19A and 19B, round haul nets may not be used within 750 feet of any public
37 pier.

38 (b) It is unlawful to buy, sell, or possess in any place of business where fish are bought, sold, or
39 processed, any dead fish taken under the authority of this section.”

40 **The staff invites comment on whether the combination and restatement of these parts of**
41 **existing Fish and Game Code Sections 8754 and 8757 in proposed Section 11760 would**
42 **substantively change the intended meaning of the existing provisions.**

43 **§ 11765. District 1840**

44 11765. In District 1840, notwithstanding Section 10855, a round haul net may
45 be used to take fish for use or sale as live bait, subject to the following restrictions:

46 (a) The net shall not be used within 750 feet of any public pier.

1 (b) It is unlawful to buy, sell, or possess any dead fish taken under the authority
2 of this section, in any place of business where fish are bought, sold, or processed.

3 (c) A bait net may not be used in violation of Section 11855.

4 **Comment.** Subdivisions (a) and (b) of Section 11765 continues the part of former Fish and
5 Game Code Section 8757 applicable to former Fish and Game District 19A without substantive
6 change.

7 Subdivision (c) continues the part of the second sentence of former Fish and Game Code
8 Section 8780(a) applicable to former Fish and Game District 19A without substantive change.

9 **§ 11770. District 1845**

10 11770. In District 1845, a round haul net may be used to take fish for use or sale
11 as live bait, subject to the following restrictions:

12 (a) The net shall not be used within 750 feet of any public pier.

13 (b) It is unlawful to buy, sell, or possess any dead fish taken under the authority
14 of this section, in any place of business where fish are bought, sold, or processed.

15 (c) A bait net may not be used in violation of Section 11855.

16 **Comment.** Subdivisions (a) and (b) of Section 11770 continues the part of former Fish and
17 Game Code Section 8757 applicable to former Fish and Game District 19B without substantive
18 change.

19 Subdivision (c) continues the part of the second sentence of former Fish and Game Code
20 Section 8780(a) applicable to former Fish and Game District 19B without substantive change.

21 **§ 11775. District 1850**

22 11775. (a) In District 1850, purse nets and round haul nets may be used, except
23 at the following times in the following locations:

24 (1) From sunrise Saturday to sunset Sunday, in the area from a line extending
25 three nautical miles east magnetically from the extreme easterly end of Santa
26 Catalina Island southwesterly and northerly, to a line extending three nautical
27 miles southwest magnetically from the most southerly promontory of China Point.

28 (2) At any time during the period from June 1 to September 10, in the area from
29 a line extending three nautical miles east magnetically from the extreme easterly
30 end of Santa Catalina Island southerly, to a line extending three nautical miles
31 southeasterly magnetically from the United States government light on the
32 southeasterly end of Santa Catalina Island.

33 (b) Subdivision (a) shall not be construed as restricting the right to use the
34 waters described in that subdivision for anchorage of vessels at any time.

35 (c) In addition to subdivision (a), and notwithstanding Section 10860, a round
36 haul net may be used to take fish in the district for use or sale as live bait. It is
37 unlawful to buy, sell, or possess any dead fish taken under the authority of this
38 section, in any place of business where fish are bought, sold, or processed.

39 (d) Notwithstanding any other provision of this section, a bait net may not be
40 used in the district in violation of Section 11855.

41 **Comment.** Subdivisions (a) and (b) of Section 11775 continue the part of former Fish and
42 Game Code Section 8755 applicable to former Fish and Game District 20 without substantive
43 change.

1 Subdivision (c) continues the part of former Fish and Game Code Section 8757 applicable to
2 former Fish and Game District 20 without substantive change.

3 Subdivision (d) continues the part of the second sentence of former Fish and Game Code
4 Section 8780(a) applicable to former Fish and Game District 20 without substantive change.

5 **Staff Note.** There appears to be some text missing from existing Fish and Game Code Section
6 8755. The existing section reads as follows:

7 “In Districts 20A and 21, purse and round haul nets may be used.

8 (a) Purse and round haul nets may be used, except: (1) from sunrise Saturday to sunset Sunday,
9 in that portion of District 20 from a line extending three nautical miles east magnetically from the
10 extreme easterly end of Santa Catalina Island southwesterly and northerly to a line extending
11 three nautical miles southwest magnetically from the most southerly promontory of China Point
12 and (2) at any time during the period commencing on June 1st and ending on September 10 in
13 each year, in that portion of District 20 from a line extending three nautical miles east
14 magnetically from the extreme easterly end of Santa Catalina Island southerly to a line extending
15 three nautical miles southeasterly magnetically from the United States government light on the
16 southeasterly end of Santa Catalina Island.

17 (b) Subdivision (a) shall not be construed as restricting the right to use the waters therein
18 specified for anchorage of vessels at any time.”

19 Based on the construction of the section, the staff surmises that the beginning of subdivision (a)
20 of this section was meant to read “(a) Purse and round haul nets may be used *in District 20*,
21 except:...” Proposed Section 11775 is based on this understanding.

22 **The staff invites comment on whether proposed Section 11775 properly states the**
23 **intended application of existing Section 8755 to existing Fish and Game District 20.**

24 **§ 11780. District 1855**

25 11780. In District 1855, purse nets and round haul nets may be used.

26 Comment. Section 11780 continues the part of former Fish and Game Code Sections 8755
27 applicable to former Fish and Game District 20A without change.

28 **§ 11785. District 1860**

29 11785. In District 1860, purse nets and round haul nets may be used.

30 **Comment.** Section 11785 continues the part of former Fish and Game Code Sections 8755
31 applicable to former Fish and Game District 21 without change.

32 **Article 4. Bait Nets**

33 **Staff Note.** It is the staff’s understanding that a bait net is a type of round haul net. See
34 existing Fish and Game Code Section 8780(a). The following provisions are drafted accordingly.

35 **§ 11850. Authority of commission**

36 11850. The commission may, upon the recommendation of the department,
37 adopt regulations governing the use of bait nets.

38 **Comment.** Section 11850 continues former Fish and Game Code Section 8780.1 without
39 change.

1 **§ 11855. Prohibited use of rings**

2 11855. Except for a drum seine or other round haul net authorized under a
3 permit issued by the department, a bait net may not have rings along the lead line
4 or any method of pursing the bottom of the net.

5 **Comment.** Section 11855 continues the second sentence of former Fish and Game Code
6 Section 8780(a) without substantive change.

7 **§ 11860. Districts allowing use of bait nets**

8 11860. (a) A bait net may be used to take fish for bait in Districts 1770, 1775,
9 1780, 1785, 1790, 1800, 1810, 1815, 1820, 1825, 1830, 1835, 1845, 1855, 1860,
10 1890, and 1895.

11 **Comment.** Section 11860 continues the part of former Fish and Game Code Section 8780(b)
12 applicable to former Fish and Game Districts 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 19B, 20A,
13 21, 118, and 118.5 without substantive change.

14 **§ 11865. District 1840**

15 11865. (a) In District 1840, a bait net may be used only to take anchovies,
16 queenfish, white croakers, sardines, mackerel, squid, and smelt, for live bait
17 purposes only. A bait net may not be used within 750 feet of Seal Beach Pier or
18 Belmont Pier.

19 (b) No other species of fish may be taken on any boat carrying a bait net in
20 District 1840, except that loads or lots of fish may contain not more than 18
21 percent, by weight of the fish, of other bait fish species taken incidentally to other
22 fishing operations and that are mixed with other fish in the load or lot.

23 **Comment.** Section 11865 continues former Fish and Game Code Section 8780(c) and (d)
24 without substantive change.

25 **Staff Note.** There exists some ambiguity in existing Fish and Game Code Section 8780
26 relating to the allowed use of bait nets in existing Fish and Game District 19A. Subdivision (b) of
27 the section, as applicable to District 19A, reads as follows:

28 “(b) Bait nets may be used to take fish for bait in Districts ... 19A.....”

29 However, subdivision (c) of the same sections reads:

30 “(c) In District 19A, bait nets may be used only to take anchovies, queenfish, white croakers,
31 sardines, mackerel, squid, and smelt for live bait purposes only. Bait nets may not be used within
32 750 feet of Seal Beach Pier or Belmont Pier.”

33 Based on the construction of the section, the staff reads subdivision (c) as a limitation on
34 subdivision (b), effectively rendering subdivision (b) superfluous as relates to District 19A.
35 Proposed Section 11865 is based on this understanding.

36 **The staff invites comment on whether proposed Section 11865 properly states the**
37 **intended application of existing Section 8780 to existing Fish and Game District 19A.**

38 **CHAPTER 9. BEACH NETS**

39 **§ 11900. District 1705**

40 11900. In District 1705, a beach net shall not be possessed on a boat.

1 **Comment.** Section 11900 continues the part of former Fish and Game Code Section 8801
2 applicable to former Fish and Game District 1 without substantive change.

3 **§ 11905. District 1725**

4 11905. In District 1725, a beach net shall not be possessed on a boat.

5 **Comment.** Section 11905 continues the part of former Fish and Game Code Section 8801
6 applicable to former Fish and Game District 2 without substantive change.

7 **§ 11910. District 1740**

8 11910. In District 1740, a beach net shall not be possessed on a boat.

9 **Comment.** Section 11910 continues the part of former Fish and Game Code Section 8801
10 applicable to former Fish and Game District 3 without substantive change.

11 **§ 11915. District 1780**

12 11915. In District 1780, a beach net may be used.

13 **Comment.** Section 11915 continues the part of former Fish and Game Code Section 8802
14 applicable to former Fish and Game District 8 without substantive change.

15 **§ 11920. District 1785**

16 11920. In District 1785, a beach net may be used.

17 **Comment.** Section 11920 continues the part of former Fish and Game Code Section 8802
18 applicable to former Fish and Game District 9 without substantive change.

19 **§ 11925. District 1790**

20 11925. (a) In District 1790, a beach net may be used if its meshes are at least 1
21 1/2 inches in length.

22 (b) In that portion of District 1790 lying south of Point Lobos, a beach net may
23 be used to take surf smelt only if it is over 20 feet in length and has meshes at least
24 seven-eighths of an inch in length.

25 **Comment.** Section 11925 continues former Fish and Game Code Section 8803 without
26 substantive change.

27 **§ 11930. District 1800**

28 11930. In District 1800, a beach net may be used.

29 **Comment.** Section 11930 continues the part of former Fish and Game Code Section 8804
30 applicable to former Fish and Game District 11 without substantive change.

31 **§ 11935. District 1810**

32 11935. In District 1810, a beach net shall not be possessed on a boat.

33 **Comment.** Section 11935 continues the part of former Fish and Game Code Section 8805
34 applicable to former Fish and Game District 12 without substantive change.

35 **§ 11940. District 1815**

36 11940. In District 1815, a beach net shall not be possessed on a boat.

37 **Comment.** Section 11940 continues the part of former Fish and Game Code Section 8805

1 applicable to former Fish and Game District 13 without substantive change.

2 **§ 11945. District 1830**

3 11945. In District 1830, a beach net shall not be used.

4 **Comment.** Section 11945 continues former Fish and Game Code Section 8806 without
5 substantive change.

6 **§ 11950. District 1835**

7 11950. In District 1835, a beach net, the meshes of which are at least 1 1/2
8 inches in length, may be used to take smelt between September 1st and January
9 31st.

10 **Comment.** Section 11950 continues former Fish and Game Code Section 8807 without
11 substantive change.

12 CHAPTER 10. TRAWL NETS

13 Article 1. General Provisions

14 **§ 12000. Legislative declaration**

15 12000. (a) The Legislature finds and declares that the use of nearshore trawl nets
16 was authorized through the experimental gear permit process and the alternative
17 gear development program as a potential alternative to the use of gill and trammel
18 nets in areas where the use of that gear type has been prohibited.

19 (b) The Legislature, in considering the needs of user groups, requires the use of
20 nearshore trawl nets to be phased out effective January 1, 1993.

21 **Comment.** Section 12000 continues former Fish and Game Code Section 8606.1 without
22 change.

23 **Staff Note.** The staff invites comment on whether existing Fish and Game Code Section
24 **8606.1 is obsolete and can be discontinued.**

25 **§ 12005. Conformity with federal regulations**

26 12005. (a) Except as otherwise provided in this article, the use of a trawl net
27 shall conform to federal groundfish regulations adopted pursuant to the Magnuson
28 Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.).

29 (b) A commercial bottom trawl vessel issued a state permit is subject to the
30 requirements and policies of the federal groundfish observer program (50 C.F.R.
31 660.360).

32 **Comment.** Subdivision (a) of Section 12005 continues the second sentence of former Fish and
33 Game Code Section 8830 without substantive change.

34 Subdivision (b) continues former Fish and Game Code Section 8841(d) without substantive
35 change.

1 § 12010. Commission and department authority

2 12010. (a) The commission is hereby granted authority over all state-managed
3 bottom trawl fisheries not managed under a federal fishery management plan
4 pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16
5 U.S.C. Sec. 1801 et seq.), or a state fishery management plan pursuant to **Part 1.7**
6 **(commencing with Section 7050)**, to ensure that resources are sustainably
7 managed, to protect the health of ecosystems, and to provide for an orderly
8 transition to sustainable gear types in situations where bottom trawling may not be
9 compatible with these goals.

10 (b) The commission is hereby granted authority to manage all of the following
11 fisheries in a manner that is consistent with this section and **Part 1.7**
12 **(commencing with Section 7050)**:

13 (1) California halibut.

14 (2) Sea cucumber.

15 (3) Ridge-back, spot, and golden prawn.

16 (4) Pink shrimp.

17 (c) The commission is also granted authority over other types of gear targeting
18 the same species as the bottom trawl fisheries referenced in subdivision (a) to
19 manage in a manner that is consistent with the requirements of **Part 1.7**
20 **(commencing with Section 7050)**.

21 (d) The commission may only authorize additional fishing areas for bottom
22 trawls after it determines, based on the best available scientific information, that
23 bottom trawling in those areas is sustainable, does not harm bottom habitat, and
24 does not unreasonably conflict with other users.

25 (e) The commission shall facilitate the conversion of bottom trawlers to gear that
26 is more sustainable if the commission determines that conversion will not
27 contribute to overcapacity or overfishing. The commission may participate in, and
28 encourage programs that support, conversion to low-impact gear or capacity
29 reduction by trawl fleets. The department may not issue new permits to bottom
30 trawlers to replace those retired through a conversion program.

31 (f) As soon as practicable, but not later than May 1, 2005, the commission and
32 the department shall submit to the Pacific Fishery Management Council and the
33 National Marine Fisheries Service a request for federal management measures for
34 the pink shrimp fishery that the commission and the department determine are
35 needed to reduce bycatch or protect habitat, to account for uncertainty, or to
36 otherwise ensure consistency with federal groundfish management.

37 (g) This section does not apply to the use of trawl nets pursuant to a scientific
38 research permit.

39 **Comment.** Section 12010 continues former Fish and Game Code Section 8841(a)-(c), (e), and
40 (i)-(k) without substantive change.

41 **Staff Note.** The staff invites comment on whether existing Section 8841(k) (which would
42 be continued by proposed Section 12010(f)) is obsolete.

1

Article 2. Prohibitions

2 § 12050. Mesh size

3 12050. It is unlawful for a person to use a trawl net with meshes that are less
4 than 4 1/2 inches in length, except as provided in this article or as provided by
5 federal groundfish regulations adopted pursuant to the Magnuson Fishery
6 Conservation and Management Act (16 U.S.C., Sec. 1801 et seq.).

7 **Comment.** Section 12050 continues former Fish and Game Code Section 8831 without
8 substantive change.

9 § 12055. Bag or cod-end

10 12055. It is unlawful to use or possess a trawl net that includes a bag or cod-end,
11 or modification of a bag or cod-end, except a bag or cod-end of a single layer of
12 webbing or as otherwise authorized by **Section 8496** or by the commission.

13 **Comment.** Section 12055 continues former Fish and Game Code Section 8837 without
14 substantive change.


15 § 12060. Prohibited roller gear

16 12060. (a) It is unlawful to use roller gear more than eight inches in diameter.

17 (b) This section does not apply to the use of a trawl net pursuant to a scientific
18 research permit.

19 **Comment.** Subdivision (a) of Section 12060 continues former Fish and Game Code Section
20 8841(f) without substantive change.

21 Subdivision (b) continues former Fish and Game Code Section 8841(i) without substantive
22 change.

23  **Staff Note.** Existing Fish and Game Code Section 8841(f) (which would be continued by
24 proposed Section 12060(a)) is one provision in a much longer section that generally relates to
25 bottom trawling. However, the provision itself provides no context for its prohibition, and on its
26 face could be given broader application than intended.

27 **The staff invites comment on whether the provision should be revised to prohibit use of**
28 **roller gear in connection with a trawl net.**

29 § 12065. Bottom trawling in ocean waters

30 12065. (a) Except as provided in **Section 8495 or 8842**, it is unlawful to engage
31 in bottom trawling in ocean waters of the state.

32 (b) This section does not apply to the use of a trawl net pursuant to a scientific
33 research permit.

34 **Comment.** Subdivision (a) of Section 12065 continues former Fish and Game Code Section
35 8841(h) without substantive change.

36 Subdivision (b) continues former Fish and Game Code Section 8841(i) without substantive
37 change.

38 § 12070. Required permit for vessel

39 12070. (a) No vessel may utilize bottom trawling gear without a state or federal
40 permit.

1 (b) This section does not apply to the use of trawl nets pursuant to a scientific
2 research permit.

3 **Comment.** Subdivision (a) of Section 12070 continues former Fish and Game Code Section
4 8841(l) without substantive change.

5 Subdivision (b) continues former Fish and Game Code Section 8841(i) without substantive
6 change.

7 **§ 12075. Chafing gear**

8 12075. (a) Chafing gear may be used or possessed, but shall not be connected
9 directly to the terminal or closed end of the cod-end.

10 (b) Except for chafing gear prescribed under federal groundfish regulations
11 adopted pursuant to the Magnuson Fishery Conservation and Management Act (16
12 U.S.C., Sec. 1801 et seq.), all chafing gear shall have a minimum mesh size of six
13 inches, unless only the bottom one-half, or underside, of the cod-end is covered by
14 chafing gear, which may be of any size mesh.

15 **Comment.** Section 12075 continues former Fish and Game Code Section 8840 without
16 substantive change.

17 **Article 3. Special District Rules**

18 **§ 12150. District 1750**

19 12150. In District 1750, a trawl net or dragnet shall not be possessed, except
20 under regulations that the commission shall prescribe.

21 **Comment.** Section 12150 continues the part of former Fish and Game Code Section 8833
22 applicable to former Fish and Game District 4 without substantive change.

23 **§ 12155. District 1770**

24 12155. In **District 1770**, a trawl net may be used in waters not less than three
25 nautical miles from the nearest point of land on the mainland shore.

26 **Comment.** Section 12155 continues the part of former Fish and Game Code Section 8835
27 applicable to former Fish and Game District 6 without substantive change.

28 **§ 12160. District 1775**

29 12160. In **District 1775**, a trawl net may be used in waters not less than three
30 nautical miles from the nearest point of land on the mainland shore.

31 **Comment.** Section 12160 continues the part of former Fish and Game Code Section 8835
32 applicable to former Fish and Game District 7 without substantive change.

33 **§ 12165. District 1790**

34 12165. In **District 1790**, a trawl net may be used in waters not less than three
35 nautical miles from the nearest point of land on the mainland shore.

36 **Comment.** Section 12165 continues the part of former Fish and Game Code Section 8835
37 applicable to former Fish and Game District 10 without substantive change.

1 § 12170. District 1825

2 12170. In **District 1825**, a trawl net may be used in waters not less than three
3 nautical miles from the nearest point of land on the mainland shore, including
4 those parts of Monterey Bay, Estero Bay, and San Luis Obispo Bay that lie within
5 that district.

6 **Comment.** Section 12170 continues the part of former Fish and Game Code Section 8836
7 applicable to former Fish and Game District 17 without substantive change.

8 § 12175. District 1830

9 12175. In **District 1830**, a trawl net may be used in waters not less than three
10 nautical miles from the nearest point of land on the mainland shore, including
11 those parts of Monterey Bay, Estero Bay, and San Luis Obispo Bay that lie within
12 that district.

13 **Comment.** Section 12175 continues the part of former Fish and Game Code Section 8836
14 applicable to former Fish and Game District 18 without substantive change.

15 § 12180. District 1835

16 12180. In **District 1835**, a trawl net or dragnet shall not be possessed, except
17 under regulations that the commission shall prescribe.

18 **Comment.** Section 12180 continues the part of former Fish and Game Code Section 8833
19 applicable to former Fish and Game District 19 without substantive change.

20 § 12185. District 1840

21 12185. In **District 1840**, a trawl net or dragnet shall not be possessed, except
22 under regulations that the commission shall prescribe.

23 **Comment.** Section 12185 continues the part of former Fish and Game Code Section 8833
24 applicable to former Fish and Game District 19A without substantive change.

25 § 12190. District 1845

26 12190. In **District 1845**, a trawl net or dragnet may be possessed under
27 regulations that the commission shall prescribe.

28 **Comment.** Section 12190 continues the part of former Fish and Game Code Section 8833
29 applicable to former Fish and Game District 4 without substantive change.

30 § 12195. District 1850

31 12195. In **District 1850**, a trawl net or dragnet shall not be possessed.

32 **Comment.** Section 12195 continues the part of former Fish and Game Code Section 8833
33 applicable to former Fish and Game District 20 without substantive change.

34 § 12200. District 1855

35 12200. In **District 1855**, a trawl net or dragnet shall not be possessed.

36 **Comment.** Section 12200 continues the part of former Fish and Game Code Section 8833
37 applicable to former Fish and Game District 20A without substantive change.

1 § 12205. District 1860

2 12205. In **District 1860**, a trawl net or dragnet shall not be possessed, except
3 under regulations that the commission shall prescribe.

4 **Comment.** Section 12205 continues the part of former Fish and Game Code Section 8833
5 applicable to former Fish and Game District 21 without substantive change.

6 § 12210. District 1895

7 12210. In **District 1895**, a trawl net may be used in waters not less than three
8 nautical miles from the nearest point of land on the mainland shore, including
9 those parts of Monterey Bay, Estero Bay, and San Luis Obispo Bay that lie within
10 that district.

11 **Comment.** Section 12210 continues the part of former Fish and Game Code Section 8836
12 applicable to former Fish and Game District 118.5 without substantive change.

13 Article 4. Special Rules for Identified Waters

14 § 12250. Golden Gate Bridge area

15 12250. A trawl net may be used in marine and brackish waters inside of the
16 Golden Gate Bridge to take shrimp, oriental gobies, longjaw mudsuckers, plainfin
17 midshipmen, and staghorn sculpin, only in accordance with regulations that the
18 commission may prescribe.

19 **Comment.** Section 12250 continues the part of former Fish and Game Code Section 8832
20 applicable to trawl nets without substantive change.

21 § 12255. Small cod-end mesh in specified area

22 12255. It is unlawful to use any trawl net with cod-end mesh less than 7 1/2
23 inches in length and with a cod end less than 29 meshes long and a circumference
24 of not less than 47 meshes in waters lying between one and three nautical miles
25 from the mainland shore between a line running due west (270° true) from Point
26 Arguello and a line running due south (180° true) from Point Mugu.

27 **Comment.** Section 12255 continues former Fish and Game Code Section 8843 without
28 change.

29 **Staff Note.** The phrasing of this provision, which makes repeated use of the conjunction
30 “and” (“It is unlawful to use any trawl net with cod-end mesh less than...and with a code end less
31 than...and a circumference...”) is unusual, but would nevertheless normally be understood as
32 requiring *all three* stated conditions to exist for the prohibition of the provision to apply.
33 However, the Fish and Game Commission apparently reads the prohibition as applying when *any*
34 of the three conditions exist. See [http://www.co.merced.ca.us/BoardAgenda/2009/MG142477/
35 AS142530/AI142691/DO142804/all_pages.pdf](http://www.co.merced.ca.us/BoardAgenda/2009/MG142477/AS142530/AI142691/DO142804/all_pages.pdf).

36 **The staff invites comment on which of these two interpretations of existing Section 8843 is**
37 **intended.**

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CHAPTER 11. DIP NETS

Article 1. General Provisions

§ 12300. Permitted except where specifically restricted

12300. Except as provided in this chapter, a dip net may be used for commercial fishing in all state waters.

Comment. Section 12300 continues part of former Fish and Game Code Section 8870 applicable to general use of dip nets without substantive change.

Article 2. Special District Rules

§ 12350. District 1705

12350. In District 1705, a dip net shall not be baited, and may not measure more than six feet in greatest breadth.

Comment. Section 12350 continues the part of former Fish and Game Code Section 8870(a) applicable to former Fish and Game District 1 without substantive change.

§ 12355. District 1715

12355. In District 1715, a dip net shall not be baited, and may not measure more than six feet in greatest breadth.

Comment. Section 12355 continues the part of former Fish and Game Code Section 8870(a) applicable to former Fish and Game District 1 1/2 without substantive change.

§ 12360. District 1725

12360. In District 1725, a dip net shall not be baited, and may not measure more than six feet in greatest breadth.

Comment. Section 12360 continues the part of former Fish and Game Code Section 8870(a) applicable to former Fish and Game District 2 without substantive change.

§ 12365. District 1740

12365. In District 1740, a dip net shall not be baited, and may not measure more than six feet in greatest breadth.

Comment. Section 12365 continues the part of former Fish and Game Code Section 8870(a) applicable to former Fish and Game District 3 without substantive change.

§ 12370. District 1750

12370. In District 1750, a dip net shall not be baited, and may not measure more than six feet in greatest breadth.

Comment. Section 12370 continues the part of former Fish and Game Code Section 8870(a) applicable to former Fish and Game District 4 without substantive change.

1 that the commission may prescribe.

2 **Comment.** Section 12600 continues the part of former Fish and Game Code Section 8832
3 applicable to Chinese shrimp nets without substantive change.

4 TITLE 4. FISHING LINES GENERALLY

5 CHAPTER 1. GENERAL PROVISIONS

6 § 12650. Legislative declaration

7 12650. The Legislature finds and declares that it is in the best interest of the
8 people of the state and California's marine resources and fisheries that the use of
9 commercial hook and line fishing gear be regulated in a manner that assures the
10 orderly development of the fisheries, maintenance of viable resources, and
11 sustainable and satisfying commercial and recreational harvests.

12 **Comment.** Section 12650 continues former Fish and Game Code Section 9025.1 without
13 change.

14 § 12655. Permitted length

15 12655. Notwithstanding Section 10500, it is unlawful to use a fishing line,
16 including, but not limited to, a troll line or handline, that is more than 900 feet in
17 length, except when used as a set line as provided in Section 12750.

18 **Comment.** Section 12655 continues former Fish and Game Code Section 9028 without
19 substantive change. Existing Fish and Game Code Section 9025, which is presently cross-
20 referenced in existing Section 9028, was renumbered without change as Section 9025.5 in 1995.
21 See 1995 Cal. Stat. ch. 677.

22 CHAPTER 2. SPECIAL DISTRICT RULES

23 § 12700. District 6

24 12700. (a) In District 1770, notwithstanding Section 12655, a fishing line that is
25 anchored to the ocean bottom at one end and attached at the surface to a fishing
26 vessel or a buoy may be used, except under any of the following circumstances:

27 (1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

28 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
29 vessel or buoy.

30 (3) If any hooks are attached to the upper one-third of the line.

31 (b) A buoy attached to the surface end of a fishing line used pursuant to
32 subdivision (a) shall display above its waterline, in numerals at least two inches
33 high, the fisher's commercial fishing license identification number.

34 (c) Notwithstanding subdivision (a) or Sections 12655 or 12750, in waters of the
35 district within one mile of the mainland shore, the following additional restrictions
36 apply:

1 (1) It is unlawful to use more than 150 hooks on a vessel to take a fish for
2 commercial purposes when using fishing lines authorized pursuant to this title.

3 (2) Not more than 15 hooks shall be attached to any one fishing line, and no
4 fishing line shall be attached to another fishing line, while those lines are being
5 used for commercial fishing pursuant to this title, except that a single troll line
6 with not more than 30 hooks may be used to take California halibut.

7 (3) Each fishing line used pursuant to this title that is not attached to a fishing
8 vessel shall be buoyed, and the commercial fishing license identification number
9 issued to the permittee who is using the fishing line shall be marked on and visible
10 on the upper one-half of each buoy, in numbers at least two inches high.

11 **Comment.** Subdivisions (a) and (b) of Section 12700 continue the part of former Fish and
12 Game Code Section 9029 applicable to former Fish and Game District 6 without substantive
13 change.

14 Subdivision (c) continues the part of former Fish and Game Code Section 9027 applicable to
15 former Fish and Game District 6 without substantive change.

16 **Staff Note.** Existing Fish and Game Code Section 9029(c) (which would be continued in part
17 by proposed Section 12700(c)) requires a fishing line used in specified Fish and Game districts to
18 be attached to a buoy displaying “the fisherman’s” identification number. Although the section
19 further provides that the term “fisherman’s identification number” refers to the number of “the
20 person’s” commercial fishing license issued pursuant to Section 7850, it remains unclear whether
21 this reference is intended to refer to the *owner of the line*, or the person *fishing with the line*.

22 This same issue is presented by several other sections of the existing Fish and Game Code, but
23 it is possible that context in these sections dictates different conclusions. For example, this same
24 reference to the display on a buoy of the “fisherman’s” identification number is part of the
25 general regulation of set nets in existing Section 8601.5, where the context of that section seems
26 to suggest the required marking should be that of the *owner of the net*. (See Staff Note following
27 proposed Section 11000.) On the other hand, existing Section 9027, another section that governs
28 the use of fishing lines in a specially described geographic area, expressly requires the
29 identification number displayed on the buoy attached to a fishing line “the commercial fishing
30 license identification number issued... to the permittee who is *using the fishing line*.”

31 **The staff invites comment on whether existing Section 9029(c) is intended to require the**
32 **display of the commercial fishing license identification number of the *owner of the fishing***
33 **line, or of the fisher who is presently *fishing with the line*.**

34 **§ 12705. District 1775**

35 12705. (a) In District 1775, notwithstanding Section 12655, a fishing line that is
36 anchored to the ocean bottom at one end and attached at the surface to a fishing
37 vessel or a buoy may be used, except under any of the following circumstances:

38 (1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

39 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
40 vessel or buoy.

41 (3) If any hooks are attached to the upper one-third of the line.

42 (b) A buoy attached to the surface end of a fishing line used pursuant to
43 subdivision (a) shall display above its waterline, in numerals at least two inches
44 high, the fisher’s commercial fishing license identification number.

45 (c) Notwithstanding subdivision (a) or Sections 12655 or 12750, in waters of the
46 district within one mile of the mainland shore excluding ocean waters between a

1 line extending 203 degrees magnetic from Gitchell Creek and a line extending 252
2 degrees magnetic from False Cape in Humboldt County, the following additional
3 restrictions apply:

4 (1) It is unlawful to use more than 150 hooks on a vessel to take a fish for
5 commercial purposes when using fishing lines authorized pursuant to this title.

6 (2) Not more than 15 hooks shall be attached to any one fishing line, and no
7 fishing line shall be attached to another fishing line, while those lines are being
8 used for commercial fishing pursuant to this title, except that a single troll line
9 with not more than 30 hooks may be used to take California halibut.

10 (3) Each fishing line used pursuant to this title that is not attached to a fishing
11 vessel shall be buoyed, and the commercial fishing license identification number
12 issued to the permittee who is using the fishing line shall be marked on and visible
13 on the upper one-half of each buoy, in numbers at least two inches high.

14 (d) Notwithstanding subdivision (a) or Sections 12750 or 12855, in waters of the
15 district within one mile of the mainland shore, it is unlawful to use a set line,
16 vertical fishing line, or troll line to take any fish other than salmon or California
17 halibut for a commercial purpose, from sunset on Friday to sunset on the following
18 Sunday, or from sunset of the day before a state recognized legal holiday until
19 sunset on that holiday.

20 **Comment.** Subdivisions (a) and (b) of Section 12705 continue the part of former Fish and
21 Game Code Section 9029 applicable to former Fish and Game District 7 without substantive
22 change.

23 Subdivision (c) continues the part of former Fish and Game Code Section 9027 applicable to
24 former Fish and Game District 7 without substantive change.

25 Subdivision (d) continues the parts of the first and third sentences of former Fish and Game
26 Code Section 9029.5 applicable to former Fish and Game District 7 without substantive change.

27 **§ 12710. District 1790**

28 12710. (a) In District 1790, notwithstanding Section 12655, a fishing line that is
29 anchored to the ocean bottom at one end and attached at the surface to a fishing
30 vessel or a buoy may be used, except under any of the following circumstances:

31 (1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

32 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
33 vessel or buoy.

34 (3) If any hooks are attached to the upper one-third of the line.

35 (b) A buoy attached to the surface end of a fishing line used pursuant to
36 subdivision (a) shall display above its waterline, in numerals at least two inches
37 high, the fisher's commercial fishing license identification number.

38 (c) Notwithstanding subdivision (a) or Sections 12655 or 12750, in waters of the
39 district within one mile of the mainland shore excluding ocean waters between a
40 line extending 245 degrees magnetic from the most westerly point of the west
41 point of the Point Reyes headlands in Marin County and a line extending due west
42 magnetic from Point Bolinas in Marin County, the following additional
43 restrictions apply:

1 (1) It is unlawful to use more than 150 hooks on a vessel to take a fish for
2 commercial purposes when using fishing lines authorized pursuant to this title.

3 (2) Not more than 15 hooks shall be attached to any one fishing line, and no
4 fishing line shall be attached to another fishing line, while those lines are being
5 used for commercial fishing pursuant to this title, except that a single troll line
6 with not more than 30 hooks may be used to take California halibut.

7 (3) Each fishing line used pursuant to this title that is not attached to a fishing
8 vessel shall be buoyed, and the commercial fishing license identification number
9 issued to the permittee who is using the fishing line shall be marked on and visible
10 on the upper one-half of each buoy, in numbers at least two inches high.

11 (d) Notwithstanding subdivision (a) or Sections 12750 or 12860, in waters of the
12 district within one mile of the mainland shore, it is unlawful to use a set line,
13 vertical fishing line, or troll line to take any fish other than salmon or California
14 halibut for a commercial purpose, from sunset on Friday to sunset on the following
15 Sunday, or from sunset of the day before a state recognized legal holiday until
16 sunset on that holiday.

17 **Comment.** Subdivisions (a) and (b) of Section 12710 continue the part of former Fish and
18 Game Code Section 9029 applicable to former Fish and Game District 10 without substantive
19 change.

20 Subdivision (c) continues the part of former Fish and Game Code Section 9027 applicable to
21 former Fish and Game District 10 without substantive change.

22 Subdivision (d) continues the parts of the first and third sentences of former Fish and Game
23 Code Section 9029.5 applicable to former Fish and Game District 10 without substantive change.

24 **§ 12715. District 1825**

25 12715. (a) In District 1825, notwithstanding Section 12655, a fishing line that is
26 anchored to the ocean bottom at one end and attached at the surface to a fishing
27 vessel or a buoy may be used, except under any of the following circumstances:

28 (1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

29 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
30 vessel or buoy.

31 (3) If any hooks are attached to the upper one-third of the line.

32 (b) A buoy attached to the surface end of a fishing line used pursuant to
33 subdivision (a) shall display above its waterline, in numerals at least two inches
34 high, the fisher's commercial fishing license identification number.

35 (c) Notwithstanding subdivision (a) or Sections 12655 or 12750, in waters of the
36 district within one mile of the mainland shore, the following additional restrictions
37 apply:

38 (1) It is unlawful to use more than 150 hooks on a vessel to take fish for
39 commercial purposes when using a fishing line authorized pursuant to this title.

40 (2) Not more than 15 hooks shall be attached to any one fishing line, and no
41 fishing line shall be attached to another fishing line, while those lines are being
42 used for commercial fishing pursuant to this title.

1 (3) Each fishing line used pursuant to this title that is not attached to a fishing
2 vessel shall be buoyed, and the commercial fishing license identification number
3 issued to the permittee who is using the fishing line shall be marked on, and
4 visible on the upper one-half of each buoy, in numbers not less than two inches in
5 height.

6 (d) Subdivision (c) does not apply to persons who are fishing south of a line
7 extending due west from Point Conception for halibut, white sea bass, sharks,
8 skates, or rays if at least 80% of the total number of fish possessed by persons
9 aboard the vessel are halibut, white sea bass, sharks, skates, and rays.

10 **Comment.** Subdivisions (a) and (b) of Section 12715 continue the part of former Fish and
11 Game Code Section 9029 applicable to former Fish and Game District 17 without substantive
12 change.

13 Subdivisions (c) and (d) restate the part of former Fish and Game Code Section 9027.5
14 applicable to former Fish and Game District 17 without substantive change.

15 **Staff Note.** Proposed Section 12715(d) is intended to restate the part of existing Fish and
16 Game Code Section 9027.5(c) applicable to existing Fish and Game District 17 to improve the
17 clarity of that provision, without changing its substantive meaning. The existing provision reads
18 as follows:

19 “(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due
20 west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or
21 rays. The exemption in this subdivision does not apply if all of the fish possessed by persons
22 aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass,
23 sharks, skates, and rays.”

24 **The staff invites comment on whether proposed Section 12715(d) correctly restates the**
25 **part of existing Section 9027.5(c) applicable to existing Fish and Game District 17.**

26 **§ 12720. District 1830**

27 12720. (a) In District 1830, notwithstanding Section 12655, a fishing line that is
28 anchored to the ocean bottom at one end and attached at the surface to a fishing
29 vessel or a buoy may be used, except under any of the following circumstances:

30 (1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

31 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
32 vessel or buoy.

33 (3) If any hooks are attached to the upper one-third of the line.

34 (b) A buoy attached to the surface end of a fishing line used pursuant to
35 subdivision (a) shall display above its waterline, in numerals at least two inches
36 high, the fisher’s commercial fishing license identification number.

37 (c) Notwithstanding subdivision (a) or Sections 12655 or 12750, in waters of the
38 district within one mile of the mainland shore, the following additional restrictions
39 apply:

40 (1) It is unlawful to use more than 150 hooks on a vessel to take fish for
41 commercial purposes when using a fishing line authorized pursuant to this title.

42 (2) Not more than 15 hooks shall be attached to any one fishing line, and no
43 fishing line shall be attached to another fishing line, while those lines are being
44 used for commercial fishing pursuant to this title.

1 (3) Each fishing line used pursuant to this title that is not attached to a fishing
2 vessel shall be buoyed, and the commercial fishing license identification number
3 issued to the permittee who is using the fishing line shall be marked on, and
4 visible on the upper one-half of each buoy, in numbers not less than two inches in
5 height.

6 (d) Subdivision (d) does not apply to persons who are fishing south of a line
7 extending due west from Point Conception for halibut, white sea bass, sharks,
8 skates, or rays if at least 80% of the total number of fish possessed by persons
9 aboard the vessel are halibut, white sea bass, sharks, skates, and rays.

10 **Comment.** Subdivisions (a) and (b) of Section 12720 continues the part of former Fish and
11 Game Code Section 9029 applicable to former Fish and Game District 18 without substantive
12 change.

13 Subdivisions (c) and (d) restate the part of former Fish and Game Code Section 9027.5
14 applicable to former Fish and Game District 18 without substantive change.

15 **Staff Note.** Proposed Section 12720(d) is intended to restate the part of existing Fish and
16 Game Code Section 9027.5(c) applicable to existing Fish and Game District 18 to improve the
17 clarity of that provision, without changing its substantive meaning. The existing provision reads
18 as follows:

19 “(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due
20 west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or
21 rays. The exemption in this subdivision does not apply if all of the fish possessed by persons
22 aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass,
23 sharks, skates, and rays.”

24 **The staff invites comment on whether proposed Section 12720(d) correctly restates the**
25 **part of existing Section 9027.5(c) applicable to existing Fish and Game District 18.**

26 **§ 12725. District 1835**

27 12725. (a) In District 1835, notwithstanding Section 12655, a fishing line that is
28 anchored to the ocean bottom at one end and attached at the surface to a fishing
29 vessel or a buoy may be used, except under any of the following circumstances:

30 (1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

31 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
32 vessel or buoy.

33 (3) If any hooks are attached to the upper one-third of the line.

34 (b) A buoy attached to the surface end of a fishing line used pursuant to
35 subdivision (a) shall display above its waterline, in numerals at least two inches
36 high, the fisher’s commercial fishing license identification number.

37 (c) Notwithstanding subdivision (a) or Sections 12655 or 12750, in waters of the
38 district within one mile of the mainland shore, the following additional restrictions
39 apply:

40 (1), It is unlawful to use more than 150 hooks on a vessel to take fish for
41 commercial purposes when using a fishing line authorized pursuant to this title.

42 (2) Not more than 15 hooks shall be attached to any one fishing line, and no
43 fishing line shall be attached to another fishing line, while those lines are being
44 used for commercial fishing pursuant to this title.

1 (3) Each fishing line used pursuant to this title that is not attached to a fishing
2 vessel shall be buoyed, and the commercial fishing license identification number
3 issued to the permittee who is using the fishing line shall be marked on, and
4 visible on the upper one-half of each buoy, in numbers not less than two inches in
5 height.

6 (d) Subdivision (c) does not apply to persons who are fishing south of a line
7 extending due west from Point Conception for halibut, white sea bass, sharks,
8 skates, or rays if at least 80% of the total number of fish possessed by persons
9 aboard the vessel are halibut, white sea bass, sharks, skates, and rays.

10 **Comment.** Subdivisions (a) and (b) of Section 12725 continue the part of former Fish and
11 Game Code Section 9029 applicable to former Fish and Game District 19 without substantive
12 change.

13 Subdivisions (c) and (d) restate the part of former Fish and Game Code Section 9027.5
14 applicable to former Fish and Game District 19 without substantive change.

15 **Staff Note.** Proposed Section 12725(d) is intended to restate the part of existing Fish and
16 Game Code Section 9027.5(c) applicable to existing Fish and Game District 19 to improve the
17 clarity of that provision, without changing its substantive meaning. The existing provision reads
18 as follows:

19 “(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due
20 west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or
21 rays. The exemption in this subdivision does not apply if all of the fish possessed by persons
22 aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass,
23 sharks, skates, and rays.”

24 **The staff invites comment on whether proposed Section 12725(d) correctly restates the**
25 **part of existing Section 9027.5(c) applicable to existing Fish and Game District 19.**

26 CHAPTER 3. SET LINES

27 Article 1. General Provisions

28 § 12750. Set line

29 12750. (a) A set line may be used in Districts 1770, 1775, 1790, 1825, 1830, 1835.

30 (b) It is unlawful to use a set line with hooks more than 100 feet above the
31 anchor or ocean bottom.

32 (c) A set line shall be marked at both ends with buoys displaying above their
33 waterlines, in numerals at least 2 inches high, the owner’s commercial fishing
34 license identification number.

35 **Comment.** Subdivisions (a) and (b) of Section 12750 continue former Fish and Game Code
36 Section 9026 without substantive change.

37 Subdivision (c) continues the part of former Fish and Game Code Section 8601.5(a) applicable
38 to set lines without substantive change.

39 **Staff Note.** Existing Fish and Game Code Section 8601.5(a) requires both a *set net* and a *set*
40 *line* to be attached to a buoy displaying “the fisherman’s” identification number. It is unclear
41 whether this reference is intended to refer to the commercial fisher who *owns* the net or line, or
42 the commercial fisher *fishing* with the net or line.

1 The staff has suggested that, as much of the remainder of Section 8601.5 appears to relate to
2 the responsibilities of the owner of a set net, this display requirement in Section 8601.5, at least
3 with regard to a set *net*, is meant to refer to the owner of the net. (See Staff Note following
4 proposed Section 11000.) If this interpretation is correct, it would suggest that the display
5 requirement relating to a set *line* also refers to the owner of the line, and proposed Section
6 12750(c) therefore tentatively incorporates that interpretation.

7 On the other hand, existing Section 9027, which governs the use of fishing lines in a specially
8 described geographic area, expressly requires the identification number displayed on the buoy
9 attached to a fishing line “the commercial fishing license identification number issued... to the
10 permittee who is *using* the fishing line.”

11 **The staff invites comment on whether the display requirement in existing Section 8601.5**
12 **relating to the use of a set *line* is intended to require the display of the commercial fishing**
13 **license identification number of the *owner* of the line, or of the fisher who is presently**
14 ***fishing with the line.***

15 CHAPTER 4. TROLL LINES

16 Article 1. General Provisions

17 § 12800. Troll line

18 12800. A troll line or handline having not more than two hooks (plugs excepted)
19 may be used in any district.

20 **Comment.** Section 12800 continues the first part of former Fish and Game Code Section
21 9025.5(a) without substantive change.

22 Article 2. Special District Rules

23 § 12850. District 1770

24 12850. In District 1770, a troll line with more than two hooks may be used.

25 **Comment.** Section 12850 continues the second part of former Fish and Game Code Section
26 9025.5 applicable to former Fish and Game District 6 without substantive change.

27 § 12855. District 1775

28 12855. In District 1775, a troll line with more than two hooks may be used.

29 **Comment.** Subdivision (a) of Section 12855 continues the second part of former Fish and
30 Game Code Section 9025.5(a) applicable to former Fish and Game District 7 without substantive
31 change.

32 § 12860. District 1790

33 12860. (a) In District 1790, a troll line with more than two hooks may be used.

34 (b) In that part of the district in Tomales Bay, south of a line extending 252
35 degrees magnetic from the western tip of Toms Point to the opposite shore, the use
36 of troll lines or handlines is subject to the following restrictions:

37 (1) A commercial fisher shall not use more than four troll lines or handlines at
38 any time with not more than two hooks attached to each line.

39 (2) When more than one commercial fisher is aboard a vessel, not more than six
40 lines with a maximum of two hooks per line may be fished aboard that vessel.

1 **Comment.** Subdivision (a) of Section 12860 continues the second part of former Fish and
2 Game Code Section 9025.5(a) applicable to former Fish and Game District 10 without
3 substantive change.

4 Subdivision (b) continues the part of former Fish and Game Code Section 9025.5(c) applicable
5 to former Fish and Game District 10 without substantive change.

6 **§ 12865. District 1800**

7 12865. (a) In District 1800, a troll line with more than two hooks may be used
8 west of the Golden Gate Bridge.

9 (b) In that part of the district east of the Golden Gate Bridge, the use of troll
10 lines or handlines is subject to the following restrictions:

11 (1) A commercial fisher shall not use more than four troll lines or handlines at
12 any time with not more than two hooks attached to each line.

13 (2) When more than one commercial fisher is aboard a vessel, not more than six
14 lines with a maximum of two hooks per line may be fished aboard that vessel.

15 **Comment.** Subdivision (a) of Section 12865 continues the second part of former Fish and
16 Game Code Section 9025.5(a) applicable to former Fish and Game District 11 without
17 substantive change.

18 Subdivision (b) continues the part of former Fish and Game Code Section 9025.5(c) applicable
19 to former Fish and Game District 11 without substantive change.

20 **§ 12870. District 1810**

21 12870. In District 1810, notwithstanding Section 12800, the use of troll lines or
22 handlines is subject to the following restrictions:

23 (a) A commercial fisher shall not use more than four troll lines or handlines at
24 any time with not more than two hooks attached to each line.

25 (b) When more than one commercial fisher is aboard a vessel, not more than six
26 lines with a maximum of two hooks per line may be fished aboard that vessel.

27 **Comment.** Section 12870 continues the part of former Fish and Game Code Section 9025.5(c)
28 applicable to former Fish and Game District 12 without substantive change.

29 **§ 12875. District 1815**

30 12875. (a) In District 1815, notwithstanding Section 12800, the use of troll lines
31 or handlines is subject to the following restrictions:

32 (a) A commercial fisher shall not use more than four troll lines or handlines at
33 any time with not more than two hooks attached to each line.

34 (b) When more than one commercial fisher is aboard a vessel, not more than six
35 lines with a maximum of two hooks per line may be fished aboard that vessel.

36 **Comment.** Section 12875 continues the part of former Fish and Game Code Section 9025.5(c)
37 applicable to former Fish and Game District 13 without substantive change.

38 **§ 12880. District 1820**

39 12880. In District 1820, a troll line with more than two hooks may be used.

40 **Comment.** Section 12880 continues the second part of former Fish and Game Code Section
41 9025.5(a) applicable to former Fish and Game District 16 without substantive change.

1 exceed 96 hours, weather conditions at sea permitting.

2 **Comment.** Section 13055 continues the first part of former Fish and Game Code Section 9004
3 without substantive change.

4 **§ 13060. Abandonment**

5 13060. No trap shall be abandoned in state waters.

6 **Comment.** Section 13060 continues the second part of former Fish and Game Code Section
7 9004 without substantive change.

8 **§ 13065. Marking**

9 13065. A trap or string of traps shall be marked with a buoy.

10 **Comment.** Section 13065 continues former Fish and Game Code Section 9005 without
11 substantive change.

12 CHAPTER 3. DISTURBANCE OF TRAPS

13 **§ 13100. Disturbance of trap**

14 13100. (a) Except as provided in Sections 13105 and 13110, it is unlawful to
15 willfully or recklessly disturb, move, or damage a trap that belongs to another
16 person and that is marked with a buoy identification number pursuant to **Section**
17 **9006**.

18 (b) Subdivision (a) does not apply to employees of the department while
19 engaged in the performance of official duties.

20 **Comment.** Subdivision (a) of Section 13100 continues former Fish and Game Code Section
21 9002(a) without substantive change.

22 Subdivision (b) continues former Fish and Game Code Section 9002(c) without change.

23 **§ 13105. Permit to pull or raise trap**

24 13105. (a) A person, who has been issued a general trap permit under **Section**
25 **9001** and has it in his or her possession, may pull or raise a trap marked with a
26 buoy, if the buoy is marked with a buoy identification number pursuant to
27 **subdivision (b) of Section 9006**.

28 (b) A person pulling or raising a trap marked with a buoy identification number
29 other than his or her own buoy identification number shall have written permission
30 in his or her possession from the other person who holds the buoy identification
31 number that is marked on the buoy.

32 **Comment.** Section 13105 continues former Fish and Game Code Section 9002(b) without
33 substantive change.

34 **§ 13110. Publicly employed safety personnel**

35 13110. (a) Section 13100 does not apply to publicly employed safety personnel,
36 including, but not limited to, lifeguards, marine safety officers, harbor patrol
37 officers, and peace officers, who, in the performance of their official duties,

1 remove a trap, buoy, or line located in or near breaking surf or adjacent to a public
2 beach if they believe that the trap poses a public safety hazard.

3 (b) A person who removes a trap or an attachment to a trap pursuant to this
4 section that is identified by a buoy identification number is required to do the
5 following:

6 (1) Immediately return any marine life captured in the trap to the ocean.

7 (2) Make an attempt to contact the person whose permit or license number is
8 marked on the buoy, by personal contact, telephone, recorded message left on a
9 telephone answering machine, regular United States Postal Service, or by other
10 means, advising where the property is located.

11 (c) Employees of the department may disclose the name, address, and buoy
12 identification numbers of currently permitted or licensed persons to
13 representatives of public safety agencies described in this section, to assist in the
14 return of traps and attachments to their proper owners or operators.

15 (d) A person who removes a trap or an attachment to a trap pursuant to this
16 section shall have no responsibility to secure the trap or attachment against loss or
17 damage.

18 (e) If the person whose permit or license number is marked on the buoy does not
19 retrieve the trap within seven days of notification pursuant to this section, or if that
20 person cannot be identified within seven days after the trap has been removed, the
21 trap may be discarded.

22 (f) This section does not create a duty on the part of any state or local agency to
23 remove or move a trap, line, or buoy that does not create any liability pursuant to
24 Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the
25 Government Code.

26 **Comment.** Section 13110 continues former Fish and Game Code Section 9002(d) without
27 substantive change.

28 **§ 13115. Regulations relating to retrieval of commercial crab traps**

29 13115. (a) Notwithstanding any other provision of this chapter, the department,
30 in consultation with the Dungeness Crab Task Force, shall develop regulations as
31 necessary to provide for the retrieval of lost or abandoned commercial crab traps.

32 (b) This section shall become inoperative on April 1, 2019, and, as of January 1,
33 2020, is repealed, unless a later enacted statute, that becomes operative on or
34 before January 1, 2020, deletes or extends the dates on which it becomes
35 inoperative and is repealed.

36 **Comment.** Section 13115 continues former Fish and Game Code Section 9002.5 without
37 substantive change.

38 CHAPTER 4. NUISANCE

39 **§ 13150. Removal**

40 13150. A trap used without a buoy, or with a buoy that is not marked pursuant to

1 **Section 9006**, is a public nuisance, and shall be removed from state waters by any
2 person authorized to enforce this code.

3 **Comment.** Section 13150 continues former Fish and Game Code Section 9007 without
4 substantive change.

5 **§ 13155. Seizure**

6 13155. (a) A trap used in violation of this code, or any regulation adopted
7 pursuant to this code, is a public nuisance, and except as provided in Section
8 13150, shall be seized pursuant to this chapter.

9 (b) It is the duty of every person authorized to make an arrest for a violation of
10 this code governing the use of trap to take fish to seize and keep a trap used to take
11 fish in violation of the code, and report the seizure to the department.

12 (c) In lieu of a physical seizure pursuant to this section, a person authorized to
13 make an arrest for a violation of any provision of this code may attach to a trap
14 used for taking fish in violation of this code a tag of metal or other material, which
15 shall be furnished by the department for that purpose. The tag shall be impressed
16 or printed with language stating that the trap to which it is attached has been
17 seized by the department as a public nuisance.

18 (d) Attaching a tag pursuant to subdivision (c) constitutes a seizure within the
19 meaning of this section.

20 (e) The following acts are misdemeanors:

21 (1) Removing a tag attached pursuant to subdivision (c), unless authorized by
22 the department.

23 (2) Using a trap tagged pursuant to subdivision (c) for fishing purposes, unless
24 authorized by the department or by the superior court.

25 **Comment.** Subdivision (a) of Section 13155 continues former Fish and Game Code Section
26 9008 without substantive change.

27 Subdivision (b) combines and continues the second sentence of the first paragraph of former
28 Fish and Game Code Section 8630 and the second part of former Fish and Game Code Section
29 9008 without substantive change.

30 Subdivisions (c)-(e) combine and continue former Fish and Game Code Section 8631 and the
31 second part of former Fish and Game Code Section 9008 without substantive change.

32 **Staff Note.** Existing Fish and Game Code Section 9008 provides that a trap used in violation
33 of the existing code “shall be seized pursuant to Article 3 (commencing with Section 8630) of
34 Chapter 3.” The staff interprets this provision to mean that all sections in that named article, to
35 the event logically applicable to the seizure of a trap, apply to a trap seized pursuant to Section
36 9008, even though the section does not itself refer to a seized trap.

37 **The staff invites comment on whether that interpretation of existing Section 9008 is**
38 **correct, and if so, whether proposed Section 13155(b)-(e), as well as the sections that follow,**
39 **should be included in this proposed chapter.**

40 **§ 13160. Retrieval of trap by department**

41 13160. Within three days after the department has been notified in writing that a
42 vessel carrying a seized trap has arrived in port, the department may remove the
43 trap from the vessel, unless the owner has filed a bond pursuant to Section 8633.

1 The notice shall be sufficient when delivered to the office of the department
2 nearest the port where the vessel arrives.

3 **Comment.** Section 13160 combines and continues former Fish and Game Code Section 8632
4 and the second part of former Fish and Game Code Section 9008 without substantive change.

5 **§ 13165. Filing of bond by owner**

6 13165. (a) When a trap is seized pursuant to this article, the owner or any other
7 person otherwise entitled to possession of the trap may apply to the superior court
8 of the county or city and county in which the seizure was made, or the county or
9 city and county of which the claimant is a resident, for leave to file a bond and
10 regain possession of the trap, during the pendency of any proceeding for forfeiture
11 of the trap.

12 (b) The bond shall be in an amount determined by the judge to be the actual
13 value of the trap at the time of its release, and shall be conditioned on the transfer
14 of the trap to the custody of the department, if the trap is later ordered forfeited by
15 a judgment of the court.

16 (c) The bond shall be filed within three days after the seizure of the trap. Upon
17 filing the bond, the person on whose behalf it is given shall be put in possession of
18 the trap, and may use the trap until that is the judgment of the court.

19 **Comment.** Section 13165 combines and continues former Fish and Game Code Section 8633
20 and the second part of former Fish and Game Code Section 9008 without substantive change.

21 **§ 13170. Exceptions to release of trap on bond**

22 13170. Notwithstanding Section 13165, a trap seized pursuant to Section 13155
23 as illegal because of its size, manner of construction, materials used in its
24 construction, or configuration of its parts is presumed to be contraband, and shall
25 not be returned pending forfeiture, unless it can be and is modified to eliminate the
26 condition of illegality. This subdivision does not apply to a trap seized pursuant to
27 Section 13155 for illegal use.

28 (b) Notwithstanding subdivision (a), any trap seized pursuant to Section 13155
29 that is needed for evidence may be held for evidence.

30 **Comment.** Section 13170 combines and continues the part of former Fish and Game Code
31 Section 8635 applicable to traps and the second part of former Fish and Game Code Section 9008
32 without substantive change.

33 **§ 13175. Petition for forfeiture**

34 13175. (a) The department may petition the superior court of the county or city
35 and county in which the seizure is made for a judgment forfeiting the trap.

36 (b) Upon the filing of the petition, the clerk of the court shall set a time for a
37 hearing, and cause notices to be posted for at least 14 days in advance of the
38 hearing, in at least three public places in the place where the court is held, setting
39 forth the substance of the petition and the time and place of the hearing.

40 (c) At the hearing, the court shall hear evidence and determine whether the trap
41 was used in violation of this code, and if so shall order the trap forfeited.

1 (3) A permit shall be revoked if the continued use would have an adverse impact
2 on any resource, allocation of a resource, or other adverse impact to established
3 fisheries.

4 (b) A permit may authorize the use of new types of commercial fishing gear and
5 new methods of using existing gear otherwise prohibited by this code and may
6 authorize that use or the use of existing gear in areas otherwise closed to that use
7 by this code.

8 (c) The commission shall not authorize the issuance of experimental gear
9 permits concerning the use of a gear type in an area, or portion of an area, for
10 more than four consecutive years.

11 (d) The commission shall not authorize the renewal of experimental gear permits
12 originally issued prior to January 1, 1990, but notwithstanding this subdivision and
13 subdivision (c), may extend all experimental gear permits in existence on the
14 effective date of the act that amended this section during the 1991 portion of the
15 1991–92 Regular Session of the Legislature to December 31, 1992, regardless of
16 how many years they have been issued.

17 **Comment.** Section 13300 continues former Fish and Game Code Section 8606 without
18 substantive change.

19 **§ 13305. Revocation or non-renewal of permit**

20 13305. (a) Except as provided in subdivision (c), if an experimental permit
21 issued pursuant to Section 13300 is revoked or not renewed, pursuant to a
22 judgment, decision of the commission, or legislative enactment, and the permittee
23 has an outstanding loan with the State Coastal Conservancy under former Section
24 31125 of the Public Resources Code, as added by Chapter 910 of the Statutes of
25 1986, for the purchase of alternative fishing gear, the unpaid balance of the loan
26 shall be excused from the date of revocation or nonrenewal of the permit, or from
27 the date of any judgment, decision, or enactment that terminates the permit, if the
28 permittee relinquishes the permit and returns the collateral fishing gear to the
29 department, in which case the department shall take possession of the alternative
30 fishing gear for the State Coastal Conservancy.

31 (b) Any alternative gear received by the department due to a revocation,
32 nonrenewal, or termination of an experimental permit may be resold by the State
33 Coastal Conservancy at fair market value to other experimental permit applicants
34 or holders under this chapter. If the permittee chooses to keep the alternative gear
35 and repay the loan, the rate of interest shall be reduced to 3 percent for the
36 remaining balance of the loan.

37 (c) If the Legislature approves the permanent use or type of gear and the
38 commercial fishing permit or the license for the permanent use or type of gear is
39 revoked for a violation of the terms and conditions under which the fishery is
40 conducted, the permittee shall be responsible for any remaining balance on any
41 outstanding loan with the State Coastal Conservancy for the purchase of
42 alternative fishing gear.

1 **Comment.** Section 13305 continues former Fish and Game Code Section 8614 without
2 substantive change.

3 **§ 13310. Request to terminate permit**

4 13310. (a) Within the first six months of operation pursuant to an experimental
5 permit and after a reasonable and concerted effort to utilize a new type of
6 commercial fishing gear, the permittee may request that the experimental permit
7 be terminated, if it is economically infeasible to harvest the target species or if the
8 alternative gear is impractical, inefficient, or ineffective within the fishery or
9 regional area selected. The permittee shall submit copies of all landing receipts, a
10 financial statement setting forth the expenses and any revenue generated by the
11 operation of the alternative fishing gear, and a brief summary from any observers,
12 monitors, and employees regarding the operation of the alternative fishing gear to
13 the department. The department shall review the permittee's submitted material.

14 (b) If the submitted material supports the claim that the new type of commercial
15 fishing gear utilized by the permittee was either inefficient, impractical, or
16 ineffective, or that it was not economically feasible for the permittee to harvest the
17 target species, the department shall terminate the experimental permit and submit
18 its findings to the State Coastal Conservancy. Upon receiving the department's
19 report, the State Coastal Conservancy may terminate the permittee's loan. If the
20 permittee returns the collateral fishing gear to the department, the State Coastal
21 Conservancy shall reimburse the permittee from the loan fund for the principal
22 amount of the loan repaid by the permittee. The department shall take possession
23 of the fishing gear for the State Coastal Conservancy, which may resell the gear as
24 set forth in Section 13305.

25 (c) If the information does not support the claim made by the permittee, the
26 department may still terminate the experimental permit. The State Coastal
27 Conservancy may terminate the remaining balance on the loan if the permittee
28 returns the collateral fishing gear to the department, but the State Coastal
29 Conservancy shall not reimburse the permittee for previous loan payments.

30 (d) After six months of operation pursuant to an experimental permit, any
31 request to terminate the permit for the reasons set forth in subdivision (a) shall
32 include, in addition to the information required by subdivision (a), an explanation
33 of the changed circumstances or reasons that cause the new type of gear to become
34 inefficient, impractical, or ineffective or economically infeasible to harvest the
35 target species after the initial six-month operating period. The department shall
36 review the request and make its recommendation to the State Coastal Conservancy
37 following the procedures set forth in subdivisions (b) and (c). If the department
38 terminates the experimental gear permit, the State Coastal Conservancy may
39 terminate the remaining balance on the loan if the permittee returns the collateral
40 fishing gear to the department, but it shall not reimburse the permittee for any loan
41 payments received. The department shall take possession of the alternative fishing
42

- 1 gear for the State Coastal Conservancy, which may resell the gear as set forth in
2 Section 13305.
- 3 **Comment.** Section 13310 continues former Fish and Game Code Section 8615 without
4 substantive change.
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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)
7600	10000(a)-(b)	8601.5(a)	11000(a), 12750(c)
7601	314	8601.5(b) (1st, 2nd sent.)	11000(b)
7850(a)	10100(a)	8601.5(b) (3rd sent.)	11010(b)
7850(b)	10100(b)	8601.5(b) (4th sent.)	11010(c)
7850(c)(1st sent.)	10100(c)	8601.5(c)	11010(a)
7850(c) (2nd sent.)	10215	8601.6(a)	11005
7850(d)	10100(d)(1)	8602	10700
7850.5	10100(d)(2)	8603	10050
7851	10150(b)	8604	10055
7852(a)	10150(a), 10200	8606	13300
7852(b)	10150(a), 10200	8606.1	12000
7852(c)	10200	8609	10710
7852(d)	10200	8614	13305
7852(e)	10150(c)	8615	13310
7852.1	10210, 10320	8630 (1st para)	10750(a), 13155(b)
7852.2	10205	8630 (2nd para)	10770, 10775(b), 13175, 13180(b)
7852.25	10155	8631	10750(b)-(d), 13155(c)-(e)
7852.27	10105	8632	10755, 13160
7852.4	10410	8633	10760, 13165
7855	10255	8634	10775(a), 13180(a)
7856(a)-(e)	10420	8635	10765, 13170
7856(f) (1st, 2nd, 3rd sent.)	10430	8660	10850, 10855
7856(f) (4th sent.)	10425	8661	10855, 10860
7857(a)	10160	8663	10900
7857(b)	10250	8664	10905
7857(c), (d), (f)-(j)	10160	8665	10865
7857(e)	10160, 10415	8667	10550
7857(k)	10160, 10310	8750	282
7857(l)	10405	8751	11700, 11705, 11710
7857(m)	10160, 10400	8752	11715, 11720, 11725, 11730, 11735, 11740
7858	10165	8754	11745, 11750, 11755, 11760(a)-(c)
7880	10335	8755	11775(a)-(b), 11780, 11785
7881(a)	10305, 10330	8757	11760(d), 11765, 11770, 11775(c)
7881(b) (1st sent.), (c) (1st sent.)	10315(a)	8780(a) (1st sent.)	132
7881(b) (2nd sent.), (c) (2nd sent.)	10325	8780(a) (2nd sent.)	11760(e), 11765(c), 11770(c), 11775(d), 11855
7881(d)	10340	8780(b)	11860
7881(e)	10300	8780(c)-(d)	11865
7891	10580	8780.1	11850
7892 (1st sent.)	10500	8800	133
7892 (2nd sent.)	10505	8801	11900, 11905, 11910
7892 (3rd sent.)	10510	8802	11915, 11920
8110	10605	8803	11925
8111	10600	8804	11930
8112	10610	8805	11935, 11940
8113	10615	8806	11945
8114	10620		
8460 (4th para)	10000(c)		
8601	287, 288		

8807	11950	9002(a)	13100(a)
8830 (1st sent.).....	311	9002(b)	13105
8830 (2nd sent.)	12005(a)	9002(c)	13100(b)
8831	12050	9002(d)	13110
8832	12250, 12600	9002.5	13115
8833	12150, 12180, 12185, 12190, 12195, 12200, 12205	9003	13050
8835	12155,12160,12165	9004	13055, 13060
8836	12170, 12175, 12210	9005	13065
8837	12055	9007	13150
8840	12075	9008	13155, 13160, 13165, 13170, 13175, 13180
8841(a)-(c), (e), (j), (k)	12010	9025.1	12650
8841(d).....	12005(b)	9025.5(a)	12800, 12850, 12855, 12860(a), 12865(a), 12880, 12885, 12890, 12895, 12900
8841(f)	12060(a)	9025.5(b)	312
8841(h).....	12065(a)	9025.5(c)	12860(c), 12865(b), 12870, 12875
8841(i).....	12010(g), 12060(b), 12065(b), 12070(b)	9026	12750(a)-(b)
8841(l).....	12070(a)	9027	12700(c), 12705(c), 12710(c)
8843	12255	9027.5	12715(c)-(d), 12720(c)-(d), 12725(c)-(d)
8870	12300	9028	12655
8870(a)	12350, 12355, 12360, 12365, 12370	9029	12700(a)-(b), 12705(a)-(b), 12710(a)-(b), 12715(a)-(b), 12720(a)-(b), 12725(a)-(b)
8870(b).....	12375	9029.5	287, 313, 12705(d), 12710(d)
8870(c)	12380	9052	13250
8890	12500, 12505	9100	10475
9000(c)	13000	9101	10480
9000.5(a).....	138		
9000.5(b).....	173		
9000.5(c)	203		
9000.5(d).....	217		
9000.5(e)	233		
9000.5(f)	263		