

First Supplement to Memorandum 2015-52

Fish and Game Law: Gill and Trammel Nets

The Commission¹ has received the following new comment relating to the subject matter of Memorandum 2015-52:

Exhibit p.

- Harold M. Thomas, Butte County District Attorney’s Office
(December 9, 2015).....1

Mr. Thomas offers his view that “the primacy of the initiative language should be respected through a ‘conservative’ approach to changes in language.” In particular, he urges that the Commission proceed with caution in the area of organizational improvements, offering the possibility of creating confusion over geographic identifiers as an example.

At the same time, Mr. Thomas recommends that at least some specified revisions be made to the existing gill and trammel net provisions, in order to address unconstitutional and obsolete provisions, and an erroneous cross-reference.

Mr. Thomas offers no comment on the use or negative implication of the absence of legislative declarations incorporated in the existing provisions, indicating that time does not allow for what he believes is a required “case by case” analysis of that issue.

Respectfully submitted,

Steve Cohen
Staff Counsel

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.

**EMAIL FROM HAROLD M. THOMAS, BUTTE COUNTY DISTRICT
ATTORNEY'S OFFICE
(DECEMBER 9, 2015)**

Steve, while I haven't had a lot of time to review this work, I do support your view that the primacy of the initiative language should be respected through a "conservative" approach to changes in language.

You accurately point out two apparent unconstitutional provisions of the Code in that apparent gill net authorizations conflict with the initiative language and intentions. If the initiative is given proper due, gill nets need to be barred where they are prohibited by the initiative language.

The sections you identify as obsolete appear to be so and should be deleted along with the erroneous cross reference.

Organizational improvements is an area that we would urge caution. For instance, the multiplicity of geographic ocean areas tend to bury or obscure prohibitions when users of the code are not familiar with the geographic district descriptions employed in the Code. Fish and Game Districts are not in common public use as geographic identifiers.

We have no comment on the use or negative implication of the absence of legislative declarations as the analysis must be case by case and time is short.

My comments are those of the Butte County District Attorney. While I do not speak for the California District Attorneys Association I continue to report as their monitor in the revision process. Thank you for the opportunity to comment.