

Memorandum 2016-7

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 and Related Activity
- 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 Division 5 (Parts 1 through 5),⁵ and Division 6 (Parts 1 and 2)⁶ for public review and comment. Most recently, the staff presented roughly half of Part 6 of Division 5 (“Commercial Fishing”). This draft presents the remainder of provisions that would appear in Part 6 of Division 5, which would complete the presentation of provisions in that division.⁷

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.”⁸ 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, the draft is being presented 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 it might eventually receive, the staff will present the

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. The staff expects that the next draft presented to the Commission will include the remaining provisions proposed to be included in Division 6 (“Types of Animals”).

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

language in a more finished form, reflecting any decisions that the Commission has made, for inclusion in a tentative recommendation.

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

CONTENT OF DRAFT

The provisions in this draft are drawn from Part 3 (commencing with Section 7600) of Division 6 of the Fish and Game Code, and from Division 12 (commencing with Section 15000).

The provisions are organized as follows:

Part 6. Commercial Fishing and Related Activity

...

Title 8. Fishing Related Businesses

Title 9. Landing Taxes

Title 10. Fish Reduction

Title 11. Passenger Fishing Boats

Title 12. Live Fresh-Water Fish for Bait

Title 13. Commercial Fishing Reports

Title 14. Restriction or Closure of Fisheries

Title 15. Aquaculture

Title 16. Special Programs

Title 17. Magnuson-Stevens Fishery Conservation and
Management Act

UNLICENSED FISH BUSINESSES

A number of existing fish business provisions refer to a “*licensed*” fish business of a particular type. This usage seems potentially misleading, as it could imply that the provision only applies if a fish business currently holds a valid license. In other words, businesses that operate unlawfully, without a license or with an expired or suspended license, are exempted from the regulatory effect of the provision.

This same issue has come up before in the commercial fishing provisions, with regard to references to “*licensed* commercial fisherman.” In that context, the staff concluded that the term “*licensed*” was generally not intended as a limitation on the effect of a provision including that reference. And so to enhance clarity, the staff added a new provision to the commercial fishing provisions, defining a “commercial fisher” as a person engaging in an activity for which a

commercial fishing license is *required* (regardless of whether *obtained*).⁹ The term “licensed” as a modifier of “commercial fisherman” was then generally discontinued in the proposed law.

The point of those revisions was to make clear that provisions that generally regulate commercial fishing apply to anyone engaged in that activity, even those who are violating licensure requirements. Otherwise, the law would create regulatory exemptions for bad actors who engage in regulated activity without a required license.

The staff has taken the same approach in the draft attached to this memorandum, defining the different fish businesses as businesses required to hold regulatory licenses.¹⁰ The term “licensed” is then generally discontinued in existing statutory references to those businesses, in reliance on those definitions. Again, the point is to make clear that breaching a licensure requirement does not exempt a business from otherwise applicable regulatory law.

Staff Notes in the draft ask for comment on the merits of that approach.

REGULATION OF ACTIVITIES RATHER THAN PERSONS

There are a number of existing provisions regulating fish businesses that refer to a *person* engaged in a particular activity, rather than the *activity* itself. This can lead to confusing results, when applied to a person who engages in more than one regulated activity.

For example, the Legislature has provided that any person engaging in fish wholesaling¹¹ must hold a fish wholesaler’s license.¹² At the same time, the Legislature has decided that one specific type of fish that can be wholesaled — live marine aquaria fish — should be regulated separately, under an entirely different license (called a marine aquaria receiver’s license).¹³

The provision in existing law that requires a fish wholesaler’s license, but excepts marine aquaria fish from that licensing requirement, has the following

9. See proposed Section 152 (“commercial fisher”).

10. See proposed Sections 258 (“commercial passenger fishing boat owner”), 315.5 (“fish importer”), 316 (“fish processor”), 317 (“fish receiver”), 318 (“fish retailer”), 319 (“fish wholesaler”), 357 (“live freshwater bait fish dealer”), 363 (“marine aquaria collector”), and 364 (“marine aquaria receiver”).

11. In general, a fish wholesaler is a link in the commercial fish distribution chain that purchases fish from another intermediary in the chain, and then sells the fish to a retail market.

12. See existing Section 8035, which would be continued by proposed Section 14050.

13. See existing Section 8033.1, which would be continued by proposed Section 14100.

general structure (in terms that have been greatly simplified to illustrate the concept):

- (a) A person who engages in the wholesaling of fish must obtain a fish wholesaling license.
- (b) Subdivision (a) does not apply to a person required to hold a marine aquaria receiver's license.

That approach could create confusion if a person is both a fish wholesaler *and* a marine aquaria fish receiver. Because that person is required to hold a marine aquaria receiver's license, the person's separate wholesaling operation (which does not involve aquaria fish) is arguably exempted from the wholesaling license requirement. That does not seem to be what the Legislature would have intended.

A better way to express the Legislature's likely intent would be to focus on the regulated *activities*, rather than a *person* engaging in that activity:

- (a) The wholesaling of fish requires a fish wholesaling license.
- (b) Subdivision (a) does not apply to the wholesaling of marine aquaria fish.

Under that approach, it would be clear that a person who engages in both wholesaling and dealing in marine aquaria fish must hold *both* licenses.

In the attached draft, the staff has revised the fish business licensing provisions to follow this latter approach, in order to avoid this and several other similar problems.

Staff notes in the attached draft explain these changes, and ask for comment on the merits of the alternative drafting approach.

CONCLUSION

The attached draft, along with two previously presented drafts, represents an initial attempt to consolidate 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.¹⁴ Because the Commission does not have significant historical experience analyzing 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

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

§ 15055. Nuisance	48
TITLE 11. PASSENGER FISHING BOATS	50
§ 15100. Application of chapter	50
§ 15105. Activity requiring license	50
§ 15110. Required commercial boat registration	50
§ 15115. License fee	51
§ 15120. Maintenance of records	51
§ 15125. Forfeiture, suspension, or revocation of license	51
§ 15130. Fishing from commercial passenger fishing boat	51
§ 15135. License suspension for unlawful sale or purchase of fish	52
§ 15140. Commercial boat registration suspension for unlawful sale or purchase of fish	53
TITLE 12. LIVE FRESH-WATER FISH FOR BAIT	54
§ 15200. When license required	54
§ 15205. Term of license	54
§ 15210. License fee	54
§ 15215. Revocation of license	55
§ 15220. Take only of permitted species	55
§ 15225. Restriction on gear used to take certain species	55
TITLE 13. COMMERCIAL FISHING REPORTS	55
§ 15300. Required record of fishing activities	55
§ 15305. Confidentiality of department records	56
§ 15310. Compilation of reports by department	57
§ 15315. Suspension or revocation of commercial fishing license or privileges	57
TITLE 14. RESTRICTION OR CLOSURE OF FISHERIES	58
§ 15400. Restriction on take based on unsustainable fishing	58
§ 15405. Removal of restriction	59
§ 15410. Appeal of closure or restriction	59
§ 15415. Development of alternative fisheries or alternative fishing gear	59
TITLE 15. AQUACULTURE	60
CHAPTER 1. GENERAL PROVISIONS	60
§ 15500. Applicability of title	60
§ 15505. Governing provisions	60
CHAPTER 2. ADMINISTRATION	60
Article 1. Agency Duties and Powers	60
§ 15550. Coordination of agencies	60
§ 15555. Commission regulation	60
§ 15560. Preparation of environmental impact reports by department	61
§ 15565. Department aquaculture coordinator	62
Article 2. Fees and Costs	62
§ 15600. Costs for requested inspections	62
§ 15605. Evaluation of fees by department	63
CHAPTER 3. REGISTRATION	63
Article 1. General Provisions	63
§ 15650. Registration requirement	63
§ 15655. Required information	63
§ 15660. Department review of registration	64
Article 2. Fees	64
§ 15700. Registration fee	64
§ 15705. Surcharge fee based on gross annual sales	64
§ 15710. Penalty for delinquent fee payment	65

§ 15715. Expenditure of collected funds	66
CHAPTER 4. AQUATIC ORGANISMS	67
§ 15750. Regulation of placement of organisms	67
§ 15755. Operation detrimental to adjacent wildlife	67
§ 15760. Permit required to place organisms	67
§ 15765. Movement of fish between registered aquaculturists	67
§ 15770. Fee for use of public land and waters	68
CHAPTER 5. ACQUISITION OF ORGANISMS	68
§ 15850. Sources for brood stock	68
§ 15855. Collection of organisms by registered aquaculturist	69
§ 15860. Sale of organisms by department	69
§ 15865. Ownership of progeny	69
CHAPTER 6. LEASING OF STATE WATER BOTTOMS	69
Article 1. General Provisions	69
§ 15900. Authority and procedure	69
§ 15905. Lease required for marine finfish aquaculture	70
§ 15910. Standards for leases and regulation	70
§ 15915. Exemption from standards for specified restoration or enhancement plans	72
§ 15920. Disclaimer of application to other marine finfish aquaculture law or regulation	72
Article 2. Lease Procedure	72
§ 15950. Application for lease	72
§ 15955. Public notice of application	73
§ 15960. Notification to State Lands Commission	73
§ 15965. Lease to new bidders	73
Article 3. Terms of Lease	74
§ 16000. Term of lease	74
§ 16005. Rent increases by Legislature	74
§ 16010. Renewal of lease	74
§ 16015. Periodic reports to commission	75
§ 16020. Oyster leases	75
Article 4. Rights and Responsibilities of Lessee	75
§ 16050. Payment of rent	75
§ 16055. Lessee responsibility for infringement	76
§ 16060. Lessee rights to organisms	76
§ 16065. Accommodation of public activity in leased area	76
§ 16070. Termination of lease	76
§ 16075. Assignment of lease	77
Article 5. Prohibitions	77
§ 16100. Protection of leased area	77
CHAPTER 7. DISEASE CONTROL	77
Article 1. Administration	77
§ 16150. Responsibilities for disease control	77
§ 16155. Inspection of areas by department	78
§ 16160. Aquaculture Disease Committee	78
§ 16165. Recommendation of regulations	78
§ 16170. Authorized action by director	79
§ 16175. Quarantine or destruction of other plants or animals infected with nonlisted disease	79
§ 16180. Coordination of action in government and private facilities	79
§ 16185. Investigation of reported disease or parasite	80

§ 16190. Prevention of importation of diseased aquatic plant or animal	80
§ 16195. Permit to move quarantined plant or animal	80
Article 2. Claims	80
§ 16250. Compensation to owner of destroyed plant or animal.....	80
§ 16255. Claims against the department	81
§ 16260. Disallowing of claim	81
§ 16265. Liability for disease eradication	82
CHAPTER 8. IMPORTATION OF AQUATIC PLANTS AND ANIMALS.....	82
§ 16300. Application of chapter	82
§ 16305. Required approval by department	82
§ 16310. Prohibited importation.....	82
§ 16315. Application for importation.....	83
§ 16320. Application of California Environmental Quality Act.....	83
CHAPTER 9. AQUACULTURE DEVELOPMENT COMMITTEE.....	83
§ 16350. Constitution of committee	83
§ 16355. Term of membership	84
§ 16360. Compensation	84
§ 16365. Meetings	84
§ 16370. Function of committee	84
CHAPTER 10. PROHIBITIONS	84
Article 1. General Provisions	84
§ 16400. Unlawful taking.....	84
Article 2. Exotic or Transgenic Species.....	85
§ 16450. Application of article.....	85
§ 16455. Definitions	85
§ 16460. Prohibitions	85
§ 16465. Research pursuant to permit	85
§ 16470. Notification of permit application	86
TITLE 16. SPECIAL PROGRAMS	86
CHAPTER 1. LIMITED ENTRY FISHERIES	86
§ 16550. Eligibility	86
§ 16555. Partnerships	87
§ 16560. Accidental death of permittee.....	87
CHAPTER 2. COMMERCIAL FISHERIES CAPACITY REDUCTION PROGRAM	88
§ 16600. Federal groundfish buy-back program	88
§ 16605. Establishment of program	88
§ 16610. Capacity reduction fee.....	89
§ 16615. Regulation conforming state law with federal law.....	89
CHAPTER 3. INSURANCE POOLING.....	89
§ 16650. Loss or damage to vessel or machinery.....	89
TITLE 17. MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT.....	90
CHAPTER 1. GENERAL PROVISIONS	90
§ 16750. Defined terms	90
§ 16755. Declaration of legislative findings	90
§ 16760. Declaration of policy	90
§ 16765. Inapplicability of Administrative Procedure Act	91
CHAPTER 2. ADOPTION OF NEW REGULATIONS	91
§ 16800. Required public hearing	91
§ 16805. Adoption of regulations to conform state law	92
§ 16810. Hearing and report to Legislature prerequisite to adoption of regulation	93

§ 16815. Report to Legislature of need to conform state law	93
CHAPTER 3. REPEAL OR AMENDMENT OF REGULATIONS	94
§ 16850. Amendment or repeal of regulation by director	94
§ 16855. Hearing and report to Legislature prerequisite to amendment or repeal of regulation	94
DISPOSITION OF FORMER LAW	95

DIVISION 1. GENERAL PROVISIONS

....

1

PART 2. DEFINITIONS

2
3
4
5
6
7
8
9
10
11

☞ 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 definitions, other than those for which limited application is appropriate, and consolidate them in this introductory title.

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

(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.

....

12
13
14
15
16

§ 257. “Commercial passenger fishing boat”

257. For purposes of this title, “commercial passenger fishing boat” means a boat or vessel from which its owner, for profit, permits a passenger to take fish.

Comment. Section 257 is new. It is drawn from former Fish and Game Code Section 7920, and is added for drafting convenience.

17
18
19

☞ Staff Note. The staff invites comment on whether it would be problematic to include in the proposed law and generalize a definition of the term “commercial passenger fishing boat” as set forth in proposed Section 257 that would apply code-wide.

20
21
22
23
24
25

§ 258. “Commercial passenger fishing boat owner”

310.5. “Commercial passenger fishing boat owner” means a person engaging in an activity for which a commercial passenger fishing boat license is required pursuant to Section 15105.

Comment. Section 258 is new, and is added for drafting convenience. It is drawn from former Fish and Game Code Section 7920.

26
27
28

☞ Staff Note. The staff invites comment on whether it would be problematic to include in the proposed law and generalize a definition of the term “commercial passenger fishing boat owner” as set forth in proposed Section 258 that would apply code-wide.

29
30
31
32
33

§ 315.5. “Fish importer”

315.5. “Fish importer” means a person engaging in an activity for which a fish importer’s license is required pursuant to Section 13850.

Comment. Section 315.5 is new, and is added for drafting convenience. It is drawn from former Fish and Game Code Section 8036.

34
35
36

☞ Staff Note. The staff invites comment on whether it would be problematic to include in the proposed law and generalize a definition of the term “fish importer” as set forth in proposed Section 310.5 that would apply code-wide.

1 § 316. “Fish processor”

2 316. “Fish processor” means a person engaging in an activity for which a fish
3 processor’s license is required pursuant to Section 13900.

4 **Comment.** Section 316 is new, and is added for drafting convenience. It is drawn from former
5 Fish and Game Code Section 8034.

6 **☞ Staff Note.** The staff invites comment on whether it would be problematic to include in
7 the proposed law and generalize a definition of the term “fish processor” as set forth in
8 proposed Section 316 that would apply code-wide.

9 § 317. “Fish receiver”

10 317. “Fish receiver” means a person engaging in an activity for which a fish
11 receiver’s license is required pursuant to Section 13950.

12 **Comment.** Section 317 is new, and is added for drafting convenience. It is drawn from former
13 Fish and Game Code Section 8033.

14 **☞ Staff Note.** The staff invites comment on whether it would be problematic to include in
15 the proposed law and generalize a definition of the term “fish receiver” as set forth in
16 proposed Section 317 that would apply code-wide.

17 § 318. “Fish retailer”

18 318. “Fish retailer” means a person engaging in an activity for which a fish
19 retailer’s license is required pursuant to Section 14000.

20 **Comment.** Section 318 is new, and is added for drafting convenience. It is drawn from former
21 Fish and Game Code Section 8033.5.

22 **☞ Staff Note.** The staff invites comment on whether it would be problematic to include in
23 the proposed law and generalize a definition of the term “fish retailer” as set forth in
24 proposed Section 318 that would apply code-wide.

25 § 319. “Fish wholesaler”

26 319. “Fish wholesaler” means a person engaging in an activity for which a fish
27 wholesaler’s license is required pursuant to Section 14050.

28 **Comment.** Section 319 is new, and is added for drafting convenience. It is drawn from former
29 Fish and Game Code Section 8035.

30 **☞ Staff Note.** The staff invites comment on whether it would be problematic to include in
31 the proposed law and generalize a definition of the term “fish wholesaler” as set forth in
32 proposed Section 319 that would apply code-wide.

33 § 357. “Limited entry fishery”

34 357. “Limited entry fishery” means a fishery in which the number of persons
35 who may participate or the number of vessels that may be used in taking a
36 specified species of fish is limited by statute or regulation.

37 **Comment.** Section 357 continues former Fish and Game Code Section 8100 without change.

38 § 358. “Live freshwater bait fish dealer”

39 358. “Live freshwater bait fish dealer” means a person engaging in an activity

1 for which a live freshwater bait fish license is required pursuant to Section 15200.

2 **Comment.** Section 358 is new, and is added for drafting convenience. It is drawn from former
3 Fish and Game Code Section 8460.

4 **☞ Staff Note.** The staff invites comment on whether it would be problematic to include in
5 the proposed law and generalize a definition of the term “live freshwater bait fish dealer” as
6 set forth in proposed Section 358 that would apply code-wide.

7 **§ 363. “Marine aquaria collector”**

8 363. “Marine aquaria collector” means a person engaging in an activity for
9 which a marine aquaria collector’s permit is required pursuant to **Section 8597.**

10 **Comment.** Section 363 is new, and is added for drafting convenience. It is drawn from former
11 Fish and Game Code Section 8597.

12 **☞ Staff Note.** The staff invites comment on whether it would be problematic to include in
13 the proposed law and generalize a definition of the term “marine aquaria collector” as set
14 forth in proposed Section 363 that would apply code-wide.

15 **§ 364. “Marine aquaria receiver”**

16 364. “Marine aquaria receiver” means a person engaging in an activity for which
17 a marine aquaria receiver’s license is required pursuant to Section 14100.

18 **Comment.** Section 364 is new, and is added for drafting convenience. It is drawn from former
19 Fish and Game Code Section 8033.1.

20 **☞ Staff Note.** The staff invites comment on whether it would be problematic to include in
21 the proposed law and generalize a definition of the term “marine aquaria receiver” as set
22 forth in proposed Section 364 that would apply code-wide.

23 **§ 367. “Master”**

24 367. “Master” means the person on board a vessel who is in charge of the vessel.

25 **Comment.** Section 367 continues the last paragraph of former Fish and Game Code Section
26 12002.7 and former Fish and Game Code Section 12002.8(f).

....

DIVISION 5. HUNTING, TRAPPING, AND FISHING GENERALLY

....

PART 6. COMMERCIAL FISHING AND RELATED ACTIVITY

....

TITLE 8. FISH-RELATED BUSINESSES

CHAPTER 1. GENERAL PROVISIONS

Article 1. Licensing Generally

§ 13700. Activity requiring license

13700. Notwithstanding any other provision in this title, the following activities do not require a license pursuant to this title:

(a) The sale of fish by a commercial fisher to a fish receiver.

(b) The take, transport, or sale of live freshwater fish for bait by a live freshwater bait fish dealer.

(c) The sale of fish or an aquaculture product at retail to the ultimate consumer.

(d) Dealing in aquaculture products governed by Title 15 (commencing with Section 15500).

(e) Dealing with nonnative live products utilized solely for pet industry or hobby purposes and not human consumption.

(f) The unloading of fish or fish products from a commercial fishing boat at a dock, by a person employed by a fish receiver.

(g) The purchase, sale, take, or receipt of live marine fish for use as live bait, which are not brought ashore.

(h) Acting as an agent for another person in negotiating the purchase or sale of fish, in return for a fee, commission, or other compensation.

Comment. Section 13700 restates former Fish and Game Code Section 8030 without substantive change.

Staff Notes. (1) Proposed Section 13700 is intended to restate existing Fish and Game Code Section 8030 to improve the clarity of that section, without changing the section's substantive meaning. The existing section reads as follows:

“8030. Any person who engages in any business for profit involving fish shall be licensed pursuant to this article, except as follows:

(a) A commercial fisherman who sells fish only to persons licensed under this article to purchase or receive fish from commercial fishermen and who does not engage in any activity described in Section 8034, 8035, or 8036 unless licensed to engage in both activities.

(b) A person licensed pursuant to Section 8460 who only takes, transports, or sells live freshwater fish for bait.

(c) A person who sells fish or aquaculture products only at retail to the ultimate consumer if that person does not conduct any activities described in Section 8033, 8035, or 8036.

1 (d) Pursuant to Division 12 (commencing with Section 15000), a person who deals only in
2 products of aquaculture.

3 (e) A person who deals only with nonnative live products that are not utilized for human
4 consumption but that are utilized solely for pet industry or hobby purposes and who does not
5 engage in the activities described in Section 8033.1.

6 (f) A person who is employed by the fish receiver to unload fish or fish products from a
7 commercial fishing boat at a dock.

8 (g) A person who purchases, sells, takes, or receives live marine fish for use as live bait, that
9 are not brought ashore, and who does not engage in any activity described in Section 8033,
10 8033.1, 8034, 8035, or 8036.

11 (h) A person who does not purchase or obtain fish, but who acts as an agent for others while
12 negotiating purchases, or sales of fish in return for a fee, commission, or other compensation.”

13 The staff is concerned that the existing language is potentially problematic, in two respects.

14 First, the section mandates that a person engaging in any business for profit “involving fish,”
15 other than the persons expressly exempted by the section, must obtain a license pursuant to the
16 article in which Section 8030 appears. However, there are likely businesses “involving fish” that
17 are not included in the list of exemptions, and for which the referenced article does not offer a
18 license.

19 Second, the scope of the existing exceptions seems too restrictive. Read literally, the
20 exceptions are inapplicable to persons who engage in more than one kind of fish business.

21 For example, Section 8030(b) provides that “[a]ny person who engages in any business for
22 profit involving fish shall be licensed pursuant to this article, except ... [a] person licensed
23 pursuant to Section 8460 who *only* takes, transports, or sells live freshwater fish for bait.”

24 The last part of that provision was probably intended to make clear that an exemption from
25 licensure for one kind of activity (e.g., selling live freshwater fish as bait) does not exempt a
26 person from any other applicable licensure requirements. Thus, if a person operates both a
27 freshwater fish bait shop *and* a fish wholesaling business, the operation of the bait shop does not
28 excuse the person from the requirement to obtain a fish wholesaler’s license.

29 However, read literally, the restriction seems to go too far. If our hypothetical bait shop
30 operator also operates a licensed fish wholesaler business, the operation of the second business
31 would seem to take the person out of the exemption entirely. In other words, the live bait
32 exemption only applies to persons who do not engage in other types of fish businesses.

33 The staff sees no policy reason for such a restriction. It seems inadvertent.

34 If so, the problem could be avoided by recasting the exemptions to apply to specified *activities*,
35 rather than to *persons* who engage in those activities. Thus, an exemption from licensure for the
36 *activity* of operating a bait shop would have no effect the licensure requirements that govern other
37 activities (e.g., wholesaling). Proposed Section 13700 takes that drafting approach.

38 **The staff invites comment on whether proposed Section 13700 accurately continues the**
39 **intended meaning of existing Section 8030.**

40 (2) As a general proposition, except where there exists clear legislative intent to achieve a
41 different result, the proposed law would replace references to the term “licensed commercial
42 fisherman” with the term “commercial fisher,” which is defined as a person “engaging in an
43 activity for which a commercial fishing license is *required*.... (regardless of whether the person
44 *had* a valid license). See proposed Section 152 (“commercial fisher”) and Staff Note following.
45 As expressed in that Staff Note, the rationale for that revision is the staff’s belief that the
46 Legislature intended that laws regulating commercial fishing should apply to anyone *engaged* in
47 the regulated activity, regardless of whether the person held a valid *license* to do so.

48 This rationale applies equally to persons involved in other regulated commercial fishing
49 businesses, and so throughout this part of the proposed law the staff has proposed similar
50 revisions of references to licensed fish receivers, wholesalers, etc. In general, these revisions take
51 the form of replacing references to “licensed” fish receivers, wholesalers, etc. with newly
52 proposed provisions that define a person engaged in a regulated commercial fish business as “a
53 person engaging in an activity for which a [specified] license is required,” pursuant to an

1 identified section in this title. See proposed Sections 258 (“commercial passenger fishing boat
2 owner”), 315.5 (“fish importer”), 316 (“fish processor”), 317 (“fish receiver”), 318 (“fish
3 retailer”), 319 (“fish wholesaler”), 364 (“marine aquaria receiver”).

4 **The staff invites public comment on whether these revisions would be problematic.**

5 **§ 13705. Types of licenses**

6 13705. (a) A multi-function commercial fish business license shall be issued that
7 authorizes any or all activities described in Section 13850, 13900, 13950, or
8 14050.

9 (b) A specialty fish business license that authorizes some but not all, activities
10 described in subdivision (b), shall be issued in five classes, as follows:

11 (1) A fish receiver’s license, as provided in Section 13950.

12 (2) A marine aquaria receiver’s license, as provided in Section 14100.

13 (3) A fish processor’s license, as provided in Section 13900.

14 (4) A fish wholesaler’s license, as provided in Section 14050.

15 (5) A fish importer’s license, as provided in Section 13850.

16 **Comment.** Subdivision (a) of Section 13705 continues the first sentence of former Fish and
17 Game Code Section 8032(a) without substantive change.

18 Subdivision (b) restates former Fish and Game Code Section 8032(b) without substantive
19 change.

20 **Staff Notes.** (1) Proposed Section 13705(a) would identify the “commercial fish business
21 license” referenced in the first sentence of existing Fish and Game Code Section 8032(a) as a
22 “multi-function commercial fish business license,” using the nomenclature assigned to that
23 license by the Department of Fish and Wildlife.

24 **The staff invites comment on whether this renaming of the referenced license in Section
25 8032(a) would be problematic.**

26 (2) Existing Section 8032(a) does not include among the activities authorized by a multi-
27 function license the activities requiring a marine aquaria receiver’s license pursuant to existing
28 Section 8033.1. This omission appears arguably in conflict with the language of Section 8032(b),
29 which provides for issuance of specialty licenses “for part of, but not all, activities described in
30 subdivision (a)” that includes a marine aquaria receiver’s license.

31 The omission also appears to conflict with existing Section 8037(a), which provides (with
32 emphasis added) that “A person who engages in business involving fish which business activity
33 would require more than one class of license *under this article* [an article that includes a
34 provision authorizing a marine aquaria receiver’s license] shall obtain *either* a commercial fish
35 business license issued under subdivision (a) of Section 8032 or each of the specialty licenses
36 which are required....”

37 The exclusion of marine aquaria receiver activity from the activity authorized by a multi-
38 function license would also appear to mean that a business that receives both marine aquaria
39 organisms as well as other fish is required in all cases to obtain two licenses.

40 **The staff invites comment on whether activity requiring a marine aquaria receiver’s
41 license is intended to be authorized, or in practice is authorized, by a multi-function
42 commercial fish business license.**

43 (3) Neither existing Section 8032(a) nor existing Section 8032(b) reference activity requiring a
44 fish retailer’s license, pursuant to existing Section 8033.5. The omission from Section 8032(a)
45 would again appear to mean that a person who engages both in activity requiring a fish retailer’s
46 license as well as activity requiring one or more other specialty licenses would in all cases have to
47 obtain two licenses.

48 In addition, the staff is uncertain why a fish retailer’s license under existing Section 8033.5 is
49 not listed in Section 8032(b) as a specialty fish business license, and suggests its omission could

1 create confusion in light of references elsewhere in the code to persons who have or who are
2 required to have a fish business license generally.

3 In addition this omission also appears to conflict with existing Section 8037(a), which again
4 appears to authorize a person engaging in multiple activity requiring *any* of the licenses
5 authorized under the article in which Section 8037(a) appears — which includes a fish retailer’s
6 license — to obtain a single multi-function license that authorizes all such activity.

7 **The staff invites comment on whether the omission from existing Section 8032(a) of**
8 **activity requiring a fish retailer’s license, and the omission from existing Section 8032(b) of**
9 **a reference to that license, is intended.**

10 (4) Proposed Section 13705(b) is intended to restate existing Fish and Game Code Section
11 8032(b) to improve the clarity of that provision, without changing its substantive meaning. The
12 existing provision reads as follows:

13 “(b) Specialty licenses for part of, but not all, activities described in subdivision (a) shall be
14 issued in five classes, as follows:

15 (1) Fish receiver’s license, issued to any person engaged in the business of receiving fish as
16 provided in Section 8033.

17 (2) Marine aquaria receiver’s license, issued to any person engaged in the business of receiving
18 live marine species indigenous to California waters from a person required to be a licensed
19 commercial fisherman for the purpose of wholesaling or retailing those species for pet industry or
20 hobby purposes as provided in Section 8033.1.

21 (3) Fish processor’s license, issued to any person engaged in the business of processing fish as
22 provided in Section 8034.

23 (4) Fish wholesaler’s license, issued to any person who is engaged in the business of
24 wholesaling fish as provided in Section 8035.

25 (5) Fish importer’s license, issued to any person who is engaged in the business of importing
26 fish as provided in Section 8036.”

27 The proposed revisions to the five numbered paragraphs would delete what appear intended as
28 shorthand descriptions of the provisions of the cross-referenced sections within those paragraphs.
29 The deletions are proposed to eliminate any possible inconsistency between these shorthand
30 descriptions and the substantive provisions of the cross-referenced sections.

31 **The staff invites comment on whether proposed Section 13705(b) accurately continues the**
32 **intended substantive meaning of existing Section 8032(b).**

33 **§ 13710. Conditions of license**

34 13710. Unless otherwise specified, all of the following conditions apply to each
35 commercial fish business license, permit, or other entitlement issued pursuant to
36 this title:

37 (a) An application for a commercial fish business license, permit, or other
38 entitlement shall be made on a form containing information as required by the
39 department.

40 (b) A commercial fish business license shall be signed by the holder before use.

41 (c) A person who has had a commercial fish business license suspended or
42 revoked shall not engage in that business activity, and shall not receive any other
43 commercial fish business license, permit, or other entitlement that authorizes
44 engaging in that business activity, while the suspension or revocation is in effect.

45 (d) A commercial fish business license, permit, or other entitlement is not
46 transferable, unless otherwise expressly specified in this code.

47 (e) Any person required to hold a commercial fish business license, permit, or
48 other entitlement, who moves or acquires a new or additional plant, facility, or

1 other place of business for profit involving fish, shall notify the department of the
2 address within three months of commencing business activities at the address.

3 (f) Each plant, facility, or other place of business in which an activity occurs that
4 is required to be licensed under this title shall have a copy of each required license
5 on display and available for inspection at any time by the department.

6 (g) Any person required to be licensed pursuant to this title shall provide the
7 department, at the time of application, with the business name, business address,
8 and business telephone number for all locations doing business under the authority
9 of the person’s commercial fish business license, permit, or entitlement.

10 (h) Any person required to be licensed pursuant to this title who is subject to
11 landing taxes as defined in Section 14250, and has failed to pay all landing taxes
12 and penalties pursuant to Section 14650, shall not be allowed to renew or obtain
13 that commercial fish business license, permit, or entitlement, until payment is
14 made in full to the department.

15 (i) Any person licensed pursuant to this title who is subject to landing taxes as
16 defined in Section 14250, and fails to submit landing receipts pursuant to Article 2
17 (commencing with Section 14400) or Article 3 (commencing with Section 14450)
18 of Chapter 3 of Title 9, may be subject to suspension or revocation of that
19 commercial fish business license, permit, or entitlement.

20 **Comment.** Section 13710 continues former Fish and Game Code Section 8032.5(a), (b), and
21 (d)-(i) without substantive change.

22 **Staff Note.** Existing Fish and Game Code Section 8032.5(h) (which would be continued by
23 proposed Section 13710(h)) provides that a person “licensed” to engage in a fish related business
24 who has not paid landing tax owed shall not be allowed to renew that license until they pay the
25 owed tax in full. Consistent with the rationale generally implemented throughout this part relating
26 to equivalent regulation of both licensed and *unlicensed* commercial fish activity, proposed
27 Section 13710(h) would provide that a person *required to be* licensed pursuant to this title who
28 owed landing tax may neither renew *nor obtain* that license, until the tax was paid.

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

30 **§ 13715. Term of license**

31 13715. A license issued under this title is valid from January 1 to December 31,
32 inclusive, or, if issued after the beginning of that term, for the remainder of that
33 term.

34 **Comment.** Section 13715 continues former Fish and Game Code Section 8038 without
35 substantive change.

36 **§ 13720. License on premises of business**

37 13720. Each plant, facility, or other place of business in which an activity occurs
38 that is required to be licensed pursuant to this title shall have a copy of the
39 required license on the premises.

40 **Comment.** Section 13720 continues the second sentence of former Fish and Game Code
41 Section 8037(a) without substantive change.

1 **Staff Note.** Proposed Section 13720 would continue the second sentence of existing Fish and
2 Game Code Section 8037(a).

3 Section 8037(a) in its entirety reads as follows (with the second sentence italicized):

4 “A person who engages in business involving fish which business activity would require more
5 than one class of license under this article shall obtain either a commercial fish business license
6 issued under subdivision (a) of Section 8032 or each of the specialty licenses which are required
7 for the classes of activities engaged in. *Each plant, facility, or other place of business in which an*
8 *activity occurs that is required to be licensed shall have a copy of the required license.”*

9 **The staff invites comment on whether proposed Section 13720 correctly continues the**
10 **intended application of the second sentence of existing Section 8037(a).**

11 **§ 13725. Possession and display of identification**

12 13725. (a) At all times when engaged in any activity for which a commercial
13 fishing license is required, or in any activity described in this title for which a
14 commercial fish business license is required, the person engaged in that activity
15 shall have in his or her possession, or immediately available to the person, a valid
16 driver’s license or identification card issued to him or her by the Department of
17 Motor Vehicles, or by the entity issuing driver’s licenses from the person’s state of
18 domicile.

19 (b) The driver’s license or identification card shall be exhibited upon demand to
20 any person authorized by the department to enforce this code, or regulations
21 adopted pursuant to this code.

22 **Comment.** Section 13725 continues the part of former Fish and Game Code Section 7852.27
23 applicable to fishing business licenses without substantive change.

24 **Staff Note.** Existing Fish and Game Code Section 7852.27 (which, as applicable to fish
25 business licenses would be continued by proposed Section 13725), in requiring a license to have
26 in possession at all times a valid driver’s license or identification card, appears to limit “persons”
27 who may receive a fish business license to only natural persons. Given that existing Section 67
28 defines “person” as including a partnership, corporation, limited liability company, trust, or other
29 type of association, is it the intent of this provision to foreclose any of these listed entities from
30 being issued a fish business license in the name of the entity?

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

32 **§ 13730. Fee for multi-function fish business license**

33 13730. (a) The annual fee for a multi-function commercial fish business license
34 is one thousand three hundred seventy-three dollars (\$1,373).

35 (b) The commission shall adjust the amount of the fee specified in subdivision
36 (a), as necessary, to fully recover, but not exceed, all reasonable administrative
37 and implementation costs of the department and the commission relating to those
38 licenses.

39 (c) The fee specified in this section is applicable to the 2004 license year, and
40 shall be adjusted annually thereafter pursuant to Section 2780.

41 **Comment.** Subdivision (a) of Section 13730 continues a part of former Fish and Game Code
42 Section 8032(a) without substantive change.

43 Subdivision (b) continues former Fish and Game Code Section 8032(c) without substantive
44 change.

1 Subdivision (c) continues the part of former Fish and Game Code Section 8039 applicable to
2 multi-function commercial fish business licenses without substantive change.

3 **§ 13735. Suspension of license**

4 13735. The commission, after notice and opportunity for hearing, may suspend,
5 revoke, or cancel a commercial fish business license, permit, or other entitlement,
6 for a period of time to be determined by the commission, for any of the following
7 reasons:

8 (a) The person was not lawfully entitled to be issued the license, permit, or other
9 entitlement.

10 (b) Any violation of this code, the regulations adopted pursuant to this code, or
11 the terms of the permit or other entitlement by the licensee, permittee, person
12 holding the entitlement, or his or her agent, servant, employee, or person acting
13 under the licensee's, permittee's, or entitled person's direction or control.

14 (c) Any violation of any federal law relating to the fishery for which the license,
15 permit, or other entitlement was issued by the licensee, permittee, person holding
16 the entitlement, or his or her agent, servant, employee, or person acting under the
17 licensee's, permittee's, or entitled person's direction or control.

18 **Comment.** Section 13735 continues former Fish and Game Code Section 8032.5(c) without
19 substantive change.


20 **CHAPTER 2. SPECIALTY LICENSES**

21 **Article 1. General Provisions**

22 **§ 13800. Licensing for persons engaged in multiple businesses**

23 13800. A person who engages in activity that requires more than one class of
24 license under this chapter shall obtain either a multi-function commercial fish
25 business license pursuant to subdivision (a) of Section 13705, or shall obtain each
26 specialty license required for each activity engaged in, as provided in this chapter.

27 **Comment.** Section 13800 continues the first sentence of former Fish and Game Code Section
28 8037(a) without substantive change.

29  **Staff Note.** As discussed in more detail in a Staff Note following proposed Section 13705,
30 there may be a conflict between the first sentence of existing Section 8037(a) (which would be
31 continued by proposed Section 13800), and existing Section 8032 (which would be continued by
32 proposed Section 13705), with regard to activity requiring either a marine aquaria receiver's
33 license pursuant to Section 8033.1, or a fish retailer's license pursuant to existing Section 8033.5.

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

Article 2. Fish Importer

§ 13850. Required license

13850. The purchase or receipt, for purpose of resale to other than the ultimate consumer, of fish that were taken outside this state, and brought into this state by a person other than a commercial fisher, requires a fish importer’s license.

Comment. Section 13850 restates the first sentence of former Fish and Game Code Section 8036(a) without substantive change.

Staff Notes. (1) Proposed Section 13850 is intended to restate the first sentence of existing Fish and Game Code Section 8036(a) to improve the clarity of that provision, without changing its substantive meaning. The existing provision reads as follows:

“Any person who purchases or receives fish that are taken outside of this state and brought into this state by a person who is not a licensed commercial fisherman, for the purpose of resale to other than the ultimate consumer, shall obtain a fish importer’s license.”

Consistent with the proposed revision of existing Section 8030, which specifies exemptions from fish business licensing, proposed Section 13850 would revise existing Section 8036(a) to specify the *activities* that require a fish importer’s license, rather than the *persons* that must be licensed. **This same type of revision is proposed for all other licensing provisions throughout this title.**

The staff invites comment on whether proposed Section 13850 accurately continues the intended meaning of the first sentence of existing Section 8036(a).

(2) Existing Fish and Game Code Section 8036(b), which provides that a person who engages in activity requiring both a fish importer’s license and a fish wholesaler’s license must obtain both of those licenses, appears superfluous in light of existing Section 8037(a) (which would be continued by proposed Section 13800), and would not be continued in the proposed law.

The staff invites public comment, in light of the continuation of existing Section 8037 in the proposed law, on whether it is problematic to discontinue existing Section 8036(b).

§ 13855. Fee

13855. (a) The annual fee for a fish importer’s license is five hundred forty-nine dollars (\$549).

(b) The fee specified in this section is applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 2780.

Comment. Subdivision (a) of Section 13855 continues the second sentence of former Fish and Game Code Section 8036(a) without change.

Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to the fee for a fish importer’s license, without substantive change.

Article 3. Fish Processor

§ 13900. Required license

13900. (a) Except as provided in subdivision (b), engaging in any of the following activities for profit requires a fish processor’s license:

(1) Preserving or preparing fish for sale or delivery to other than the ultimate consumer, including, but not limited to, cleaning, cutting, gutting, scaling,

1 shucking, peeling, cooking, curing, salting, canning, breeding, packaging, or
2 packing fish.

3 (2) Manufacturing fish scraps, fish meal, fish oil, or fertilizer made from fish.

4 (b) Subdivision (a) does not apply to cleaning, beheading, gutting, or chilling
5 fish by a commercial fisher that is required to preserve the fish while aboard a
6 fishing vessel, and prevent deterioration, spoilage, or waste of the fish before they
7 are landed and delivered to a fish receiver.

8 **Comment.** Subdivision (a) of Section 13900 combines and restates and the first two sentences
9 of former Fish and Game Code Section 8031(a)(1) and the first sentence of former Fish and
10 Game Code Section 8034(a) without substantive change.

11 Subdivision (b) restates the third sentence of former Fish and Game Code Section 8031(a)(1)
12 without substantive change.

13 **Staff Notes.** (1) Proposed Section 13900(a) is intended to combine and restate the first
14 sentence of former Fish and Game Code Section 8034(a) and the first two sentences of former
15 Fish and Game Code Section 8031(a)(1), to clarify the meaning of those provisions without
16 changing their substantive effect. Proposed Section 13900(b) is intended to restate the third
17 sentence of former Fish and Game Code Section 8031(a)(1) to clarify the meaning of that
18 provision without changing its substantive effect.

19 The provisions that would be restated read as follows:

20 “8031. (a)(1) “Process fish” means any activity for profit of preserving or preparing fish for
21 sale or delivery to other than the ultimate consumer, including, but not limited to, cleaning,
22 cutting, gutting, scaling, shucking, peeling, cooking, curing, salting, canning, breeding,
23 packaging, or packing fish. “Process fish” also means the activity for profit of manufacturing fish
24 scraps, fish meal, fish oil, or fertilizer made from fish. “Process fish” does not include the
25 cleaning, beheading, gutting, or chilling of fish by a licensed commercial fisherman which is
26 required to preserve the fish while aboard a fishing vessel and which is to prevent deterioration,
27 spoilage, or waste of the fish before they are landed and delivered to a person licensed to
28 purchase or receive fish from a commercial fisherman.”

29 “8034. (a) Any person who processes fish for profit shall obtain a fish processor’s license.”

30 **The staff invites comment on whether the restatement of these provisions in proposed**
31 **Section 14300 would cause any substantive change in the meaning of any provision.**

32 (2) Existing Fish and Game Code Section 8034(b), which provides that a person who engages
33 in activity requiring both a fish processor’s license and a fish receiver’s license must obtain both
34 of those licenses (or a multi-function license), appears superfluous in light of existing Section
35 8037(a) (which would be continued by proposed Section 13800), and would not be continued in
36 the proposed law.

37 **The staff invites public comment, in light of the continuation of existing Section 8037 in**
38 **the proposed law, on whether it is problematic to discontinue existing Section 8036(b).**

39 **§ 13905. Fee**

40 13905. (a) The annual fee for a fish processor’s license is five hundred forty-
41 nine dollars (\$549).

42 (b) The fee specified in this section is applicable to the 2004 license year, and
43 shall be adjusted annually thereafter pursuant to Section 2780.

44 **Comment.** Subdivision (a) of Section 13905 continues the second sentence of former Fish and
45 Game Code Section 8034(a) without change.

46 Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to
47 the fee for a fish processor’s license, without substantive change.

Article 4. Fish Receiver

§ 13950. Required license

13950. (a) Except as provided in subdivision (b), engaging in any of the following activities requires a fish receiver’s license:

(1) Purchasing or receiving fish for a commercial purpose from a commercial fisher.

(2) Removing fish from the point of first landing that the person has taken, for a commercial purpose.

(b) Subdivision (a) does not apply to the following activities:

(1) An activity requiring licensing as a marine aquaria receiver.

(2) An activity requiring licensing as a fish retailer.

(3) Transporting fish from the point of first landing to a fish receiver under a transportation receipt completed pursuant to Chapter 4 (commencing with Section 14500) of Title 9.

Comment. Section 13950 combines and restates former Fish and Game Code Sections 8033(a) and 8047(c)(4) without substantive change.

Staff Note. Proposed Section 13950 is intended to combine and restate existing Fish and Game Code Sections 8033(a) and 8047(c)(4) to improve the clarity of those provisions, without changing their substantive meaning. The existing provisions read as follows:

“8033. (a) Except as provided in Section 8033.1 or 8033.5, or subdivision (c) of Section 8047, any person who purchases or receives fish for commercial purposes from a fisherman who is required to be licensed under Section 7850, or any person who removes fish from the point of the first landing that the person has caught for his or her own processing or sale, shall obtain a fish receiver’s license.”

“8047. (c)(4) A person transporting fish from the point of first landing under a transportation receipt is not required to be licensed to conduct the activities of a fish receiver as described in Section 8033.”

The staff invites comment on whether proposed Section 13950 accurately continues the intended meaning of existing Sections 8033(a) and 8047(c)(4).

§ 13955. License fee

13955. (a) The annual fee for a fish receiver’s license is five hundred forty-nine dollars (\$549).

(b) The fee specified in this section applies to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 2780.

Comment. Subdivision (a) of Section 13955 continues former Fish and Game Code Section 8033(b) without change.

Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to the fee for a fish receiver’s license, without substantive change.

§ 13960. Cooperative association

13960. A cooperative association of fishers may be licensed as fish receivers.

Comment. Section 13960 continues former Fish and Game Code Section 8033(c) without change.

Article 5. Fish Retailer

§ 14000. Required license

14000. The sale by a commercial fisher, for other than marine aquaria pet trade or research purposes, of fish that the commercial fisher has taken, to the ultimate consumer of that fish, requires a fish retailer’s license.

Comment. Section 14000 restates the first sentence of former Fish and Game Code Section 8033.5(a).

Staff Notes. (1) Proposed Section 14000 is intended to restate existing Fish and Game Code Section 8033.5(a) to improve the clarity of that provision, without changing its substantive meaning. The existing provision reads as follows:

“Any commercial fisherman who sells fish for other than marine aquaria pet trade or research purposes that he or she has taken to the ultimate consumer of that fish shall obtain a fisherman’s retail license.”

The staff invites comment on whether proposed Section 14000 accurately continues the intended meaning of the first sentence of existing Section 8033.5(a).

(2) Existing Fish and Game Code Section 8033.5(b), which provides that a person who engages in activity that requires both a fish retailer’s license and one or more other commercial fish business licenses must obtain all appropriate licensing, appears superfluous in light of existing Section 8037(a) (which would be continued by proposed Section 13800), and would not be continued in the proposed law.

The staff invites public comment, in light of the continuation of existing Section 8037 in the proposed law, on whether it is problematic to discontinue existing Section 8033.5(b).

§ 14005. Fee

14005. (a) The annual fee for a fish retailer’s license is sixty-nine dollars (\$69).

(b) The fee specified in this section is applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 2780.

Comment. Subdivision (a) of Section 14005 continues the second sentence of former Fish and Game Code Section 8033.5(a) without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to the fee for a fish retailer’s license without substantive change.

Article 6. Fish Wholesaler

§ 14050. Required license

14050. (a) Except as provided in subdivision (b), the purchase or receipt of fish, for the purpose of resale to other than the ultimate consumer, from a fish receiver, fish processor, fish importer, or fish wholesaler, requires a fish wholesaler’s license.

(b) Subdivision (a) does not apply to an activity requiring either of the following licenses:

(1) A marine aquaria receiver’s license.

(2) A fish importer’s license.

Comment. Subdivision (a) of Section 14050 restates former Fish and Game Code Section

1 8035(a) without substantive change.

2 Subdivision (b) restates former Fish and Game Code Section 8035(c) without substantive
3 change.

4 **Staff Notes.** (1) Proposed Section 14050(a) is intended to restate existing Fish and Game
5 Code Section 8035(a) to improve the clarity of that provision, without changing its substantive
6 meaning. The existing provision reads as follows:

7 “(a) Except for a person exempt under Section 8030, any person who, for the purpose of resale
8 to other than the ultimate consumer, purchases or obtains fish from another person, who is
9 required to be licensed as a fish receiver, fish processor, fish importer, or fish wholesaler under
10 this article, shall obtain a fish wholesaler’s license.”

11 **The staff invites comment on whether proposed Section 14050(a) accurately continues the**
12 **intended meaning of existing Section 8035(a).**

13 (2) Proposed Section 14050(b) is intended to restate existing Fish and Game Code Section
14 8035(c) to improve the clarity of that provision, without changing its substantive meaning. The
15 existing provision reads as follows:

16 “(c) This section does not apply to either of the following:

17 (1) Persons required to have a marine aquaria receiver’s license pursuant to Section 8033.1.

18 (2) Persons licensed pursuant to Section 8036 who only purchase or obtain fish from outside
19 this state.”

20 **The staff invites comment on whether proposed Section 14050(b) accurately continues the**
21 **intended meaning of existing Section 8035(c).**

22 **§ 14055. Fee**

23 14055. (a) The annual fee for a fish wholesaler’s license is three hundred
24 seventy-one dollars (\$371).

25 (b) The fee specified in this section is applicable to the 2004 license year, and
26 shall be adjusted annually thereafter pursuant to Section 2780.

27 **Comment.** Subdivision (a) of Section 14055 continues former Fish and Game Code Section
28 8035(b) without change.

29 Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to
30 the fee for a fish wholesaler’s license, without substantive change.

31 **Article 7. Marine Aquaria Receiver**

32 **§ 14100. Required license**

33 14100. Engaging in any of the following activities involving species identified
34 in **subdivision (b) of Section 8597** requires a marine aquaria receiver’s license:

35 (a) The take and sale to the ultimate consumer of a live marine organism
36 indigenous to California by a marine aquaria collector.

37 (b) The purchase or receipt of live marine species indigenous to California, for
38 a commercial purpose, from either of the following persons:

39 (1) A commercial fisher who is a marine aquaria collector.

40 (2) A person who imports from species indigenous to California waters from a
41 neighboring state.

42 **Comment.** Section 14100 restates former Fish and Game Code Section 8033.1(a) without
43 substantive change.

1 **Staff Notes.** (1) Proposed Section 14100(a) is intended to restate existing Fish and Game
2 Code Section 8033.1(a) to improve the clarity of that provision, without changing its substantive
3 meaning. The existing provision reads as follows:

4 “(a) Any person engaged in any of the following activities involving species identified in
5 subdivision (b) of Section 8597 shall obtain a nontransferable marine aquaria receiver’s license:

6 (1) A person who is required to have a marine aquaria collector’s permit pursuant to Section
7 8597 who sells live marine organisms indigenous to California, that the person has taken, to the
8 ultimate consumer.

9 (2) A person who purchases or receives live marine species indigenous to California for
10 commercial purposes from any of the following:

11 (A) A fisherman who is required to have a marine aquaria collector’s permit pursuant to
12 subdivision (a) of Section 8597.

13 (B) A person who imports from neighboring states species that are also indigenous to
14 California waters.

15 (b) A person required to be licensed as a marine aquaria receiver shall obtain all live marine
16 organisms indigenous to California waters only from fishermen, aquaculturists, or importers
17 holding current and appropriate licenses or permits.”

18 The reference to a “nontransferable” marine aquaria receiver’s license in existing Section
19 8033.1(a) is discontinued as superfluous. See existing Section 8032.5(d) (which would be
20 continued by proposed Section 13710(d)).

21 **The staff invites comment on whether proposed Section 14100 accurately continues the
22 intended meaning of existing Section 8033.**

23 (2) Existing Fish and Game Code Section 8031(a)(3) defines the term “import,” for purposes of
24 the provisions of this article, as “receiving or purchasing fish taken outside of this state which are
25 not landed in this state by a licensed commercial fisherman.” However, the word “import” is used
26 as a verb only once in the article in which Section 8031(a)(3) appears, in Section 8033.1(a)(2)(B)
27 (which would be continued by proposed Section 14100(b)(2)), and there are elements of the
28 definition that appear either superfluous to or inconsistent with the intended meaning of Section
29 8033.1. For example, while the definition refers to fish taken anywhere outside this state, Section
30 8033.1 refers to fish taken from a “neighboring” state. Further, the definition excludes from its
31 scope fish landed in this state by a commercial fisher, whereas Section 8033.1 does not expressly
32 mention that exclusion.

33 **The staff invites comment on whether the word “import” as used in existing Section
34 8033.1(a)(2)(B) should be continued as is in proposed Section 14100(b)(2) and the definition
35 of that term in Section 8031(a)(3) discontinued in the proposed law, or whether the
36 definition in Section 8031(a)(3) should be incorporated in proposed Section 14100(b)(2).**

37 **§ 14105. License fee**

38 14105. (a) The annual fee for a marine aquaria receiver’s license is one thousand
39 three hundred seventy-three dollars (\$1,373).

40 (b) The fee specified in this section is applicable to the 2004 license year, and
41 shall be adjusted annually thereafter pursuant to Section 2780.

42 **Comment.** Subdivision (a) of Section 14105 continues former Fish and Game Code Section
43 8033.2 without substantive change.

44 Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to
45 the fee for a marine aquaria receiver’s license, without substantive change.

1 § 14110. Source of indigenous organisms

2 14110. A marine aquaria receiver shall obtain all live marine organisms
3 indigenous to California waters only from commercial fishers, fish importers, or
4 aquaculturists, who hold current and appropriate licenses or permits.

5 **Comment.** Section 14110 continues former Fish and Game Code Section 8033.1(b) without
6 substantive change.

7 TITLE 9. LANDING TAXES AND RECEIPTS

8 CHAPTER 1. GENERAL PROVISIONS

9 § 14200. “Landing tax”

10 14200. For purposes of this title, “landing tax” means a privilege tax imposed
11 pursuant to this title.

12 **Comment.** Section 14200 continues former Fish and Game Code Section 8040(b) without
13 substantive change.

14 § 14205. Information from marine aquaria receivers

15 14205. The department may require any information from a marine aquaria
16 receiver that the department deems necessary to carry out this title.

17 **Comment.** Section 14205 continues former Fish and Game Code Section 8043.1(b) without
18 substantive change.

19 CHAPTER 2. LANDING TAX

20 § 14250. Persons required to pay tax

21 xxx. (a) The following persons shall pay the landing tax determined pursuant to
22 **Section 8042:**

23 (1) A fish receiver.

24 (2) A commercial fisher who sells fish to a person who is not a fish receiver.

25 (b) Notwithstanding subdivision (a), no landing tax is required for the receipt,
26 purchase, transport, or sale of the following fish:

27 (1) Live freshwater fish for use as bait.

28 (2) Live aquaria fish listed in **Section 8597**, if received or purchased by a
29 licensed marine aquaria receiver. It is the intent of the Legislature that the license
30 fee for required by Section 14105 for receiving live aquaria fish shall be in lieu of
31 a landing tax.

32 (3) Live marine fish that are not brought ashore for use as live bait.

33 **Comment.** Section 14250 restates former Fish and Game Code Section 8041 without
34 substantive change.

35 **Staff Notes.** (1) Proposed Section 14250 is intended to combine and restate existing Fish
36 and Game Code Section 8041 and the second sentence of existing Fish and Game Code Section

1 8047(b)(2) to clarify the meaning of those provisions, without changing their substantive effect.
2 The existing provisions read as follows:

3 “8041. (a) The following persons shall pay the landing tax determined pursuant to Section
4 8042:

5 (1) Any person who is required to be licensed as a fish receiver, and any person who is licensed
6 before January 1, 1987, as a wholesaler or a processor pursuant to former Section 8040 and who
7 receives fish from commercial fishermen.

8 (2) Any commercial fisherman who sells fish to any person who is not a licensed fish receiver.

9 (b) Notwithstanding subdivision (a), a person licensed pursuant to Section 8460 who only
10 takes, transports, or sells live freshwater fish for bait or a commercial fisherman who sells live
11 freshwater fish for bait to such a licensed person, and a person licensed pursuant to Section
12 8033.1 who takes, transports, or sells live aquaria fish as described in Section 8597 or a
13 commercial fisherman who sells live aquaria fish, are exempt from the landing tax imposed under
14 this article. It is the intent of the Legislature that the license fee for live aquaria fish described in
15 Section 8033.1 shall be in lieu of a landing tax.

16 (c) Notwithstanding subdivision (a), a person who purchases, sells, takes, or receives live
17 marine fish for use as live bait as described in subdivision (g) of Section 8030 is exempt from the
18 landing tax imposed under this article.”

19 “8047. (b) Persons subject to Section 8043 shall remit the landing tax imposed by Section
20 8041.”

21 **The staff invites comment on whether the restatement of these provisions in proposed**
22 **Section 14250 would cause any substantive change in the meaning of the provisions.**

23 (2) As indicated above, existing Section 8041 includes among the persons obligated to pay the
24 tax, in addition to fish receivers, person “licensed before January 1, 1987, as a wholesaler or a
25 processor pursuant to former Section 8040 and who receives fish from commercial fishermen.”

26 It is the staff’s understanding that before January 1, 1987, the licensed category of “fish
27 receiver” did not exist, and persons receiving fish from commercial fishers (other than ultimate
28 consumers) were required to be licensed as either fish wholesalers or processors pursuant to the
29 referenced former version of Section 8040. However, as it is the staff’s further understanding that
30 fish business licenses must be renewed annually. See existing Section 8030. If so, the persons in
31 this described category would long ago have had to obtain licenses as fish receivers, making this
32 described category of persons required to pay landing tax nonexistent. Proposed Section 14250
33 would therefore delete this category of persons required to pay landing tax as obsolete.

34 **The staff invites comment on the appropriateness of this deletion from existing Section**
35 **8041.**

36 **§ 14255. Calculation of tax**

37 14255. (a) The amount of the landing tax under this article shall be determined
38 by multiplying the weight of fish delivered in this state by a commercial fisher, in
39 pounds, or fraction of pounds, by the rate for the type of fish delivered set forth in
40 the following table:

41

	Rate per pound
(1) All fish, except as otherwise specified in this section	\$0.0013
(2) Mollusks and crustaceans, excluding squid and crab	.0125

(3) Crab	.0019
(4) Squid	.0019
(5) Salmon, based only on the weight in the round	.0500
(6) Lobster	.0125
(7) Abalone	.0125
(8) Anchovies	.0013
(9) Sardines	.0063
(10) Mackerel	.0013
(11) Halibut	.0125
(12) Angel shark, based only on the weight in the round	.0113
(13) Swordfish, based only on the weight in the round	.0125
(14) Thresher shark, based only on the weight in the round	.0113
(15) Bonito shark, based only on the weight in the round	.0113
(16) Herring	.0125
(17) Sea urchin	.0013
(18) Barracuda, Flying fish, Frogs, Giant sea bass, Saltwater worms, White sea bass, Yellowtail	.0125

1 (b) If the tax is imposed based upon weight in the round, and the fish is cleaned,
2 gutted, beheaded, or otherwise not in the round at the time of delivery, the tax
3 shall be adjusted by a conversion factor as determined by the department by
4 regulation.

5 **Comment.** Subdivision (a) of Section 14255 combines and continues former Fish and Game
6 Code Sections 8042(a) and 8051 without substantive change.

7 Subdivision (b) continues former Fish and Game Code Section 8042(b) without substantive
8 change.

CHAPTER 3. LANDING RECEIPTS

Article 1. Completion

§ 14300. Persons required to complete receipt

14300. The following persons are required to make a true, legible, and complete landing receipt, on a form and in a manner prescribed by the department:

- (a) The fish receiver, if any.
- (b) The marine aquaria receiver, if any.
- (c) A commercial fisher who sells or delivers fish that he or she has taken to any person who is not a fish receiver or marine aquaria receiver.

Comment. Section 14300 combines and restates the first sentence of former Fish and Game Code Section 8043(a), former Fish and Game Code Section 8043.1(a), the second and third sentences of former Fish and Game Code Section 8047(a)(2), and the first sentence of former Fish and Game Code Section 8047(b), without substantive change.

Staff Note. Proposed Section 14300(a) is intended to combine and restate the first sentence of existing Fish and Game Code Section 8043(a), the second and third sentences of existing Fish and Game Code Section 8047(a)(2) (shown in italics), and the first sentence of existing Fish and Game Code Section 8047(b), to clarify the meaning of those provisions without changing their substantive effect. The existing provisions read as follows:

“8043. (a) Every commercial fisherman who sells or delivers fish that he or she has taken to any person who is not licensed under Article 7 (commencing with Section 8030), and every person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver, as described in Section 8033, shall make a legible landing receipt record on a form to be furnished by the department.”

“8043.1. (a) A person required to be licensed as a marine aquaria receiver shall make a legible, true, and complete record of the landing receipts on a form and in a manner prescribed by the department.”

“8047. (a)(2) A person licensed under Section 8033.5 who sells his or her fish to a licensed receiver may use a transportation receipt to transport those fish only to that licensed receiver. *The receiver shall complete a landing receipt for those fish. A person who sells his or her fish to the ultimate consumer shall complete a landing receipt pursuant to Sections 8043 and 8043.2.*”

“8047. (b) Every commercial fisherman who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes pursuant to Article 7 (commencing with Section 8030) shall make a legible record in the form of the landing receipt required by Sections 8043 and 8043.1.”

The staff invites comment on whether the restatement of these provisions in proposed Section 14300 would cause any substantive change in the meaning of any of the provisions.

§ 14305. When receipt must be completed

14305. (a) A fish receiver who is required to complete a landing receipt shall do so at the time of the receipt, purchase, or transfer of the fish, whichever occurs first.

(b) A marine aquaria receiver who is required to complete a landing receipt shall do so at the time of the receipt of the organisms.

1 (c) A person required to be licensed under Title 8 (commencing with Section
2 13700) who takes his or her own fish shall complete a landing receipt shall do so
3 at the time the fish are brought ashore.

4 **Comment.** Subdivision (a) of Section 14305 restates the second sentence of former Fish and
5 Game Code Section 8043(a), as applicable to fish receivers, without substantive change.

6 Subdivision (b) restates the first sentence of former Fish and Game Code Section 8043.1(c)
7 without substantive change.

8 Subdivision (c) combines and restates the second sentence of former Fish and Game Code
9 Section 8043.1(c) and the first sentence of former Fish and Game Code Section 8047(a)(1)
10 without substantive change.

11 **☞ Staff Notes.** (1) Proposed Section 14305(a) is intended to restate the second sentence of
12 existing Fish and Game Code Section 8043(a), as applicable to fish receivers, to clarify the
13 meaning of that provision without changing its substantive effect. The existing provision
14 (indicated in italics) reads as follows:

15 “8043. (a) Every commercial fisherman who sells or delivers fish that he or she has taken to
16 any person who is not licensed under Article 7 (commencing with Section 8030), and every
17 person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct
18 the activities of a fish receiver, as described in Section 8033, shall make a legible landing receipt
19 record on a form to be furnished by the department. *The landing receipt shall be completed at the*
20 *time of the receipt, purchase, or transfer of fish, whichever occurs first.*”

21 **The staff invites comment on whether the restatement of this provision in proposed**
22 **Section 14305(a) would cause any substantive change in the meaning of the provision.**

23 (2) Proposed Section 14305(b) is intended to restate the first sentence of existing Fish and
24 Game Code Section 8043.1(c), to clarify the meaning of that provision without changing its
25 substantive effect. The existing provision (indicated in italics) reads as follows:

26 “8043.1. (a) A person required to be licensed as a marine aquaria receiver shall make a legible,
27 true, and complete record of the landing receipts on a form and in a manner prescribed by the
28 department.

29

30 (c) *The landing receipt form shall be completed at the time the organisms are received from the*
31 *commercial fisherman.*”

32 **The staff invites comment on whether the restatement of this provision in proposed**
33 **Section 14305(b) would cause any substantive change in the meaning of the provision.**

34 (3) Proposed Section 14305(c) is intended to combine and restate the second sentence of
35 existing Fish and Game Code Section 8043.1(c) and the first sentence of existing Fish and Game
36 Code Section 8047(a)(1), to clarify the meaning of those provisions without changing their
37 substantive effect. The existing provisions read as follows:

38 “8043.1. (c) A person required to be licensed as a marine aquaria receiver who takes his or
39 her own organisms shall complete a marine aquaria landing receipt form at the time the
40 organisms are brought ashore.”

41 “8047. (a)(1) A person licensed under Article 7 (commencing with Section 8030) who takes his
42 or her own fish shall make a legible record in the form of the landing receipt as required by
43 Sections 8043 and 8043.1 at the time the fish are brought ashore.”

44 **The staff invites comment on whether the restatement these two provisions in proposed**
45 **Section 14305(c) would cause any substantive change in the meaning of either provision.**

1 **§ 14310. Method of completion by commercial fisher**

2 14310. A commercial fisher who is required to complete a landing receipt shall
3 do so in either of the following ways:

4 (a) For each individual sale by that commercial fisher, at the time of the sale.

5 (b) For each day that the commercial fisher is engaged in one or more sales to
6 the ultimate consumers, the commercial fisher shall maintain an accurate tally
7 sheet of sales, which shall include complete header and signature box information
8 filled out prior to any sales, and the number of pounds, by species, of fish sold.
9 The total of the daily sales shall be recorded on the landing receipt at the
10 completion of sales for that day. A copy of the completed tally sheet shall be
11 attached to the corresponding landing receipt. The original completed tally sheet
12 shall be attached to the commercial fisher's copy of the corresponding landing
13 receipt and maintained for a period of four years.

14 **Comment.** Section 14310 restates former Fish and Game Code Section 8043.2(a) without
15 substantive change.

16 **Staff Note.** Proposed Section 14310 is intended to restate existing Fish and Game Code
17 Section 8043.2(a) to clarify the meaning of that provision, without changing its substantive effect.
18 The existing provision reads as follows:

19 "8043.2. (a) A commercial fisherman licensed pursuant to Section 8033.5 who sells fish from
20 a vessel directly to the ultimate consumer and who is required pursuant to Section 8043 to make a
21 landing receipt shall make a landing receipt in either of the following ways:

22 (1) For each individual sale by that fisherman at the time of the sale.

23 (2) For each day that the fisherman is engaged in one or more sales to the ultimate consumers,
24 the fisherman shall maintain an accurate tally sheet of sales, which shall include complete header
25 and signature box information filled out prior to any sales, and the number of pounds by species
26 of fish sold. The total of the daily sales shall be recorded at the completion of sales for that day on
27 a landing receipt. A copy of the completed tally sheet shall be attached to the corresponding
28 landing receipt. The original completed tally sheet shall be attached to the fisherman's copy of the
29 corresponding landing receipt and maintained for a period of four years."

30 **The staff invites comment on whether the restatement of this provision in proposed**
31 **Section 14310 would cause any substantive change in the meaning of the provision.**

32 **§ 14315. Advance notification to agent when specified fish landed**

33 14315. On delivery of sardines, anchovies, mackerel, squid, tuna, or bonito
34 intended to be processed or sold as fresh fish, the person who completes the
35 landing receipt, upon request of the authorized agent described in Section 14410,
36 shall notify that agent of the unloading and weighing of the fish, and shall permit
37 the agent to be present at all times during the weighing of the fish.

38 **Comment.** Section 14315 restates former Fish and Game Code Section 8046(b) without
39 substantive change.

40 **Staff Note.** Proposed Section 14315 is intended to restate existing Fish and Game Code
41 Section 8046(b) to clarify the meaning of that provision, without changing its substantive effect.
42 The existing provision reads as follows:

43 "8046. (b) On delivery of sardines, anchovies, mackerel, squid, tuna, or bonito intended to be
44 processed or sold as fresh fish, the person licensed pursuant to Article 7 (commencing with
45 Section 8030) who filled out the landing receipt, upon request of the authorized agent described

1 in subdivision (c), shall notify the authorized agent of the unloading and weighing of the fish and
2 shall permit the authorized agent to be present at all times during the weighing of the fish.”

3 **The staff invites comment on whether the restatement of this provision in proposed**
4 **Section 14315 would cause any substantive change in the meaning of the provision.**

5 **§ 14320. Content of receipt**

6 14320. A landing receipt shall show all of the following:

7 (a) The names of the species of landed fish as designated by the department, or
8 if not designated, the commonly used name of the species.

9 (b) The accurate weight of the species of fish received. Sablefish may be
10 reported in dressed weight, and if so reported, shall have the round weights
11 computed, for purposes of management quotas, by multiplying 1.6 times the
12 reported dressed weight.

13 (c) The commercial fisher’s name and commercial fishing license identification
14 number.

15 (d) The commercial boat registration number of the boat.

16 (e) The name of the recipient of the fish, and that person’s identification
17 number, if applicable.

18 (f) The date of receipt.

19 (g) The price paid for the fish.

20 (h) The department origin block number where the fish were caught.

21 (i) The type of gear used.

22 (j) Any other information the department may require.

23 **Comment.** Section 14320 combines and restates former Fish and Game Code Sections 8043(b)
24 and 8045 without substantive change.

25 **Staff Note.** Proposed Section 14320 is intended to combine and restate existing Fish and
26 Game Code Sections 8043(b) and 8045, to clarify the meaning of those provisions without
27 changing their substantive effect. The existing provisions read as follows:

28 “8043. (b) The landing receipt shall show all of the following:

29 (1) The accurate weight of the species of fish received, as designated pursuant to Section 8045.
30 Sablefish may be reported in dressed weight, and if so reported, shall have the round weights
31 computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed
32 weight.

33 (2) The name of the fisherman and the fisherman’s identification number.

34 (3) The department registration number of the boat.

35 (4) The recipient’s name and identification number, if applicable.

36 (5) The date of receipt.

37 (6) The price paid.

38 (7) The department origin block number where the fish were caught.

39 (8) The type of gear used.

40 (9) Any other information the department may prescribe.”

41 “8045. The names used in the landing receipt and transportation receipt made under Sections
42 8043 and 8047 for designating the species of fish dealt with shall be those in common usage
43 unless otherwise designated by the department.”

44 **The staff invites comment on whether the restatement of these two provisions in proposed**
45 **Section 14320 would cause any substantive change in the meaning of either provision.**

1 **§ 14325. Additional requirements applicable to completion of landing receipts**

2 14325. (a) The person that completes the landing receipt shall sign the receipt.

3 (b) The numbered landing receipts in each individual landing receipt book shall
4 be completed sequentially.

5 (c) A voided fish landing receipt shall have the word “VOID” plainly and
6 noticeably written on the face of the receipt, and shall be submitted to the
7 department in the same manner as a completed fish landing receipt is submitted to
8 the department.

9 **Comment.** Subdivision (a) of Section 14325 restates the third sentence of former Fish and
10 Game Code Section 8047(b) without substantive change.

11 Subdivision (b) continues the first sentence of former Fish and Game Code Section 8043(c)
12 without substantive change.

13 Subdivision (c) continues the second and third sentences of former Fish and Game Code
14 Section 8043(c) without substantive change.

15 **☞ Staff Note.** Proposed Section 14325(a) is intended to restate the third sentence of existing
16 Fish and Game Code Section 8047(b) to clarify the meaning of that provision, without changing
17 its substantive effect. The existing provision reads as follows:

18 “8047. (b) The person taking, purchasing, or receiving the fish, whether or not licensed
19 under Article 7 (commencing with Section 8030), shall sign the landing receipt.”

20 **The staff invites comment on whether the restatement of this provision in proposed**
21 **Section 14325(a) would cause any substantive change in the meaning of the provision.**

22 **Article 2. Retention and Delivery of Copies**

23 **§ 14400. When receipt completed by fish receiver or marine aquaria receiver**

24 14400. (a) A fish receiver or marine aquaria receiver who completes a landing
25 receipt shall retain a completed copy of the receipt for a period of four years,
26 which shall be available for inspection at any time within that period by the
27 department.

28 (b) The receiver shall also deliver a completed copy of the receipt to the
29 commercial fisher at the time of the purchase or receipt of the fish, which shall be
30 retained by the commercial fisher for a period of four years, and shall be available
31 for inspection at any time during that period by the department.

32 **Comment.** Section 14400 restates the second, third, and fourth sentences of former Fish and
33 Game Code Section 8046(a) without substantive change.

34 **☞ Staff Note.** Proposed Section 14400 is intended to restate the second, third, and fourth
35 sentences of existing Fish and Game Code Section 8046(a) to clarify the meaning of those
36 sentences, without changing their substantive effect. The existing sentences read as follows:

37 “8046. (a) A copy of the landing receipt shall be delivered to the commercial fisherman at
38 the time of the purchase or receipt of the fish. That copy of the landing receipt shall be retained
39 by the commercial fisherman for a period of four years and shall be available for inspection at
40 any time during that period by the department. A copy of the landing receipt shall be kept by the
41 person licensed pursuant to Article 7 (commencing with Section 8030) who filled out the landing
42 receipt for a period of four years and shall be available for inspection at any time within that
43 period by the department.”

1 **The staff invites comment on whether the restatement of these sentences in proposed**
2 **Section 14400 would cause any substantive change in the meaning of the provision.**

3 **§ 14405. When receipt completed by commercial fisher**

4 14405. (a) A commercial fisher who completes a landing receipt shall retain a
5 completed copy of the receipt for a period of four years, which shall be available
6 for inspection at any time within that period by the department.

7 (b) The commercial fisher shall also deliver a completed copy of the receipt to
8 the person taking, purchasing, or receiving the fish, which shall be retained by that
9 person until the fish are prepared for consumption or otherwise disposed of.

10 **Comment.** Subdivision (a) of Section 14405 restates the fifth sentence of former Fish and
11 Game Code Section 8047(b) without substantive change.

12 Subdivision (b) restates the sixth sentence of former Fish and Game Code Section 8047(b)
13 without substantive change.

14 **☞ Staff Note.** Proposed Section 14405 is intended to combine and restate the third sentence
15 of existing Fish and Game Code Section 8047(a)(1) and the fifth and sixth sentences of existing
16 Fish and Game Code Section 8047(b) to clarify the meaning of those sentences, without changing
17 their substantive effect. The existing sentences read as follows:

18 “8047(a)(1) A copy of the landing receipt shall be retained by [a person licensed under
19 Article 7 (commencing with Section 8030) who takes his or her own fish] for a period of four
20 years and shall be available for inspection at any time within that period by the department.

21 “8047. (b) A copy of the landing receipt shall be retained by the commercial fisherman for a
22 period of four years and shall be available for inspection at any time within that period by the
23 department. A copy of the landing receipt shall be retained by the person taking, purchasing, or
24 receiving the fish until they are prepared for consumption or otherwise disposed of.”

25 **The staff invites comment on whether the restatement of these sentences in proposed**
26 **Section 14405 would cause any substantive change in the meaning of the provision.**

27 **§ 14410. Delivery of copy to agent**

28 14410. Any person completing a landing receipt shall also deliver a completed
29 copy of the receipt to any agent authorized in writing by the majority of the
30 persons who participated in the taking of the fish, excluding the commercial fisher
31 receiving a copy of the receipt pursuant to Section 14400.

32 **Comment.** Section 14410 combines and restates former Fish and Game Code Section 8046(c),
33 the fourth sentence of former Fish and Game Code Section 8047(a)(1), and the last sentence of
34 former Fish and Game Code Section 8047(b) without substantive change.

35 **☞ Staff Note.** Proposed Section 14410 is intended to combine and restate existing Fish and
36 Game Code Section 8046(c), the fourth sentence of existing Fish and Game Code Section
37 8047(a)(1), and the last sentence of existing Fish and Game Code Section 8047(b) (which are
38 themselves identical) to clarify the meaning of those sentences, without changing their
39 substantive effect. All three of those provisions read as follows:

40 “A copy of the landing receipt shall be delivered to an agent authorized in writing by the
41 majority of the persons who participated in the taking of the fish, excluding the commercial
42 fisherman receiving the original copy.”

43 **The staff invites comment on whether the restatement of these sentences in proposed**
44 **Section 14410 would cause any substantive change in the meaning of the provision.**

1 § 14415. Landing of groundfish

2 14415. In addition to the requirements of this article, any person landing
3 groundfish subject to federal groundfish regulations adopted pursuant to the
4 Magnuson Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et
5 seq.) shall keep a completed copy of the landing receipt on board the fishing
6 vessel throughout, and for 15 days following, each period for which cumulative
7 landings by individual vessels are limited.

8 **Comment.** Section 14415 continues former Fish and Game Code Section 8046.1 without
9 substantive change.

10 Article 3. Delivery to Department

11 § 14450. Delivery of landing receipt to department

12 14450. The original signed copy of a completed landing receipt shall be
13 delivered to the department by the person completing the receipt on or before the
14 16th or last day of the month in which the fish were landed, whichever date occurs
15 first after the landing.

16 **Comment.** Section 14450 combines and restates the first sentence of former Fish and Game
17 Code Section 8046(a) and the second sentence of former Fish and Game Code Section 8047(a)(1)
18 without substantive change.

19 **Staff Notes.** (1) Proposed Section 14450 is intended to combine and restate the first
20 sentence of existing Fish and Game Code Section 8046(a) and the second sentence of existing
21 Fish and Game Code Section 8047(a)(1) to clarify the meaning of those provisions, without
22 changing their substantive effect. The existing provisions read as follows:

23 “8046. (a) The original signed copy of the landing receipt made under Section 8043 or 8043.1
24 shall be delivered to the department on or before the 16th or last day of the month in which the
25 fish were landed, whichever date occurs first after the landing.”

26 “8047. (a)(1) The original signed copy of the landing receipt shall be delivered by [a person
27 licensed under Article 7 (commencing with Section 8030) who takes his or her own fish] to the
28 department on or before the 16th day or the last day of the month in which the fish were landed,
29 whichever date occurs first after landing.”

30 **The staff invites comment on whether the restatement of these provisions in proposed**
31 **Section 14450 would cause any substantive change in the meaning of the provisions.**

32 (2) There appear to be two minor statutory conflicts in the existing Fish and Game Code
33 regarding delivery to the Department of Fish and Wildlife of landing receipts. First, with regard
34 to landing receipts corresponding to marine aquaria organisms, existing Section 8043.1(d)
35 provides as follows:

36 “8043.1. (d) The copies of the aquaria landing receipts shall be delivered to the department *on*
37 *or before the 1st and 16th day of each month* as provided in *Section 8046*.

38 However, existing Section 8046(a) provides as follows:

39 “8046. (a) The original signed copy of the landing receipt made under Section ... 8043.1 shall
40 be delivered to the department *on or before the 16th or last day of the month* in which the fish
41 were landed, whichever date occurs first after the landing.

42 Second, existing Section 8047, which addresses a number of different subjects, including
43 landing tax, landing receipts, and transportation receipts, provides in the fourth sentence of

1 subdivision (b) that “The original signed copy of the landing receipt shall be delivered by the
2 commercial fisherman to the department *on or before the first and 16th day of each month.*

3 Proposed Section 14450 would continue the requirement as stated in existing Section 8046(a),
4 as this section appears intended as the primary authority governing this issue, and would
5 discontinue the requirement stated in Section 8043.1(d) and 8047(b), to the extent inconsistent.

6 **The staff invites comment on the correctness of this approach.**

7 **§ 14455. Unused landing receipts**

8 14455. A person who was previously but is no longer conducting business as a
9 fish receiver shall forward all unused landing receipts and landing receipt books to
10 the department immediately upon terminating his or her business activity.

11 **Comment.** Section 14455 restates the fourth sentence of former Fish and Game Code Section
12 8043(c) without substantive change.

13 **Staff Note.** Proposed Section 14455 is intended to restate the fourth sentence of existing
14 Fish and Game Code Section 8043(c) to clarify the meaning of that provision, without changing
15 its substantive effect. The existing provision reads as follows:

16 “8043. (c) ... A fish receiver who is no longer conducting business as a licensed receiver shall
17 forward all unused landing receipts and landing receipt books to the department immediately
18 upon terminating his or her business activity.”

19 **The staff invites comment on whether the restatement of this provision in proposed**
20 **Section 14455 would cause any substantive change in the meaning of the provision.**

21 CHAPTER 4. TRANSPORTATION RECEIPTS

22 **§ 14500. Issuance of transportation receipt book**

23 14500. A transportation book receipt shall be issued to an individual commercial
24 fisher and is not transferable.

25 **Comment.** Section 14500 continues former Fish and Game Code Section 8047(c)(5) without
26 substantive change.

27 **§ 14505. Purpose**

28 14505. A transportation receipt is required only for transit purposes.

29 **Comment.** Section 14505 continues former Fish and Game Code Section 8047(c)(3) without
30 substantive change.

31 **§ 14510. Persons required to complete**

32 14510. (a) Every commercial fisher or his or her designee, who transports,
33 causes to be transported, or delivers to another person for transportation, any fish,
34 except herring, taken from state waters or brought into this state in fresh condition,
35 shall fill out a transportation receipt according to the instructions and on forms
36 provided by the department.

37 (b) A commercial fisher who sells his or her fish to a fish receiver may use a
38 transportation receipt to transport those fish only to that receiver.

39 **Comment.** Subdivision (a) of Section 14510 continues the first part of former Fish and Game
40 Code Section 8047(c)(1) without substantive change.

1 Subdivision (b) restates the first sentence of former Fish and Game Code Section 8047(a)(2)
2 without substantive change.

3 **☞ Staff Note.** Proposed Section 14510(b) is intended to restate the first sentence of existing
4 Fish and Game Code Section 8047(a)(1) to clarify the meaning of that provision, without
5 changing its substantive effect. The existing provision reads as follows:

6 “8047. (a)(1) A person licensed under Section 8033.5 who sells his or her fish to a licensed
7 receiver may use a transportation receipt to transport those fish only to that licensed receiver. The
8 receiver shall complete a landing receipt for those fish.”

9 As a “person licensed under existing Section 8033.5” is a commercial fisher who sells fish to
10 an ultimate consumer (rather than a receiver), the staff has interpreted that language as referring
11 to commercial fishers generally.

12 **The staff invites comment on whether that interpretation is correct, and whether the**
13 **restatement of this provision in proposed Section 145410(b) would cause any substantive**
14 **change in the meaning of the provision.**

15 **§ 14515. Time of completion**

16 14515. A transportation receipt shall be completed at the time fish are
17 transferred from the fishing vessel to the shore.

18 **Comment.** Section 14515 combines and restates the fourth sentence of former Fish and Game
19 Code Section 8047(a)(2) and the last part of former Fish and Game Code Section 8047(c)(1),
20 without substantive change.

21 **☞ Staff Note.** Proposed Section 14515 is intended to combine and restate the fourth sentence
22 of existing Fish and Game Code Section 8047(a)(2) and the last part of existing Fish and Game
23 Code Section 8047(c)(1) to clarify the meaning of those provisions, without changing their
24 substantive effect. The existing provisions read as follows:

25 “8047. (a)(2) Transportation receipts shall be completed at the time the fish are transferred
26 from the fishing vessel.”

27 “8047. (c)(1) Every commercial fisherman ... shall fill out a transportation receipt ... at the
28 time the fish are brought ashore.”

29 **The staff invites comment on whether the restatement of these provisions in proposed**
30 **Section 14450 would cause any substantive change in the meaning of the provisions.**

31 **§ 14520. Method of completion**

32 14520. The numbered transportation receipt forms in each individual
33 transportation receipt book shall be completed sequentially.

34 **Comment.** Section 14520 continues the first sentence of former Fish and Game Code Section
35 8047(e) without change.

36 **§ 14525. Content**

37 14525. The transportation receipt shall contain all of the following information:

38 (a) The name of each transported species of fish as designated by the
39 department, or if not designated, the commonly used name of each species.

40 (b) The date and time of the receipt.

41 (c) The accurate weight of the species of fish being transported. Sablefish may
42 be reported in dressed weight, and if so reported, shall have the round weights

1 computed, for purposes of management quotas, by multiplying 1.6 times the
2 reported dressed weight.

3 (d) The name and identification number of the commercial fisher.

4 (e) The signature of the commercial fisher authorizing transportation.

5 (f) The name of the person transporting the fish.

6 (g) The name of the fish business and fish business identification number.

7 (h) The corresponding landing receipt number issued by the fish business to the
8 commercial fisher.

9 (i) The department registration number of the vessel.

10 (j) The name of the vessel.

11 (k) The department origin block number where the fish were caught.

12 (l) The port of first landing.

13 (m) Any other information the department may prescribe.

14 **Comment.** Section 14525 combines and restates former Fish and Game Code Sections 8045
15 and 8047(d) without substantive change.

16 **Staff Note.** Proposed Section 14525 is intended to combine and restate existing Fish and
17 Game Code Sections 8045 and 8047(d), to clarify the meaning of those provisions without
18 changing their substantive effect. The existing provisions read as follows:

19 “8045. The names used in the landing receipt and transportation receipt made under Sections
20 8043 and 8047 for designating the species of fish dealt with shall be those in common usage
21 unless otherwise designated by the department.”

22 “8047. (d) The transportation receipt shall contain all of the following information:

23 (1) The name of each species of fish, pursuant to Section 8045.

24 (2) The date and time of the receipt.

25 (3) The accurate weight of the species of fish being transported. Sablefish may be reported in
26 dressed weight, and if so reported, shall have the round weights computed, for purposes of
27 management quotas, by multiplying 1.6 times the reported dressed weight.

28 (4) The name and identification number of the fisherman. The signature of the fisherman
29 authorizing transportation.

30 (5) The name of the person transporting the fish.

31 (6) The name of the fish business, the fish business identification number, and the
32 corresponding landing receipt number issued by the fish business to the commercial fisherman.

33 (7) The department registration number of the vessel and the name of the vessel.

34 (8) The department origin block number where the fish were caught.

35 (9) The port of first landing.

36 (10) Any other information the department may prescribe.”

37 **The staff invites comment on whether the restatement of these two provisions in proposed**
38 **Section 14525 would cause any substantive change in the meaning of either provision.**

39 **§ 14530. Retention and delivery of copies**

40 14530. (a) A copy of a completed transportation receipt shall be retained by the
41 commercial fisher who filled it out for a period of four years, and shall be
42 available for inspection at any time within that period by the department.

43 (b) A copy of the transportation receipt shall be given to and retained by the
44 person transporting the fish until the fish are sold fresh, processed, or otherwise
45 disposed of.

1 **Comment.** Subdivision (a) of Section 14530 continues the second sentence of former Fish and
2 Game Code Section 8047(c)(2) without substantive change.

3 Subdivision (b) continues the third sentence of former Fish and Game Code Section 8047(c)(2)
4 without change.

5 **§ 14535. Delivery to department**

6 14535. The original transportation receipt shall be signed and delivered by the
7 commercial fisher to the department on or before the 16th day or the last day of
8 the month in which the fish were landed, whichever date occurs first after landing.

9 **Comment.** Section 14535 restates the first sentence of former Fish and Game Code Section
10 8047(c)(2) without substantive change.

11 **Staff Note.** Proposed Section 14535 is intended to restate the first sentence of existing Fish
12 and Game Code Section 8047(c)(2) to clarify the meaning of that provision, without changing its
13 substantive effect. The existing provision reads as follows:

14 “8047. (c)(2) The original signed copy of the transportation receipt shall be delivered by the
15 commercial fisherman to the department on or before the 16th day or the last day of the month in
16 which the fish were landed, whichever date occurs first after landing.”

17 **The staff invites comment on whether the restatement of this provision in proposed**
18 **Section 14535 would cause any substantive change in the meaning of the provision.**

19 **§ 14540. Void receipts**

20 14540. A voided fish transportation receipt shall have the word “VOID” plainly
21 and noticeably written on the face of the receipt, and shall be submitted to the
22 department in the same manner as a completed fish transportation receipt is
23 submitted to the department.

24 **Comment.** Section 14540 continues the second and third sentences of former Fish and Game
25 Code Section 8047(e) without substantive change.

26 **§ 14545. Unused receipts**

27 14545. A person who was previously but is no longer conducting business as a
28 commercial fisher shall forward all unused transportation receipts and
29 transportation receipt books to the department immediately upon terminating his
30 or her business activity.

31 **Comment.** Section 14545 continues the fourth sentence of former Fish and Game Code
32 Section 8047(e) without substantive change.

33 **Staff Note.** Proposed Section 14545 is intended to restate the existing sentence of former
34 Fish and Game Code Section 8047(e) to clarify the meaning of that provision, without changing
35 its substantive effect. The existing provision reads as follows:

36 “8047. (e) A commercial fisherman who is no longer conducting business as a licensed
37 fisherman shall forward all unused transportation receipts and transportation receipt books to the
38 department immediately upon terminating his or her business activity.”

39 **The staff invites comment on whether the restatement of this provision in proposed**
40 **Section 14545 would cause any substantive change in the meaning of the provision.**

CHAPTER 5. ACCOUNTING RECORDS

§ 14600. Accounting records

14600. (a) In addition to the receipt required by Section 14300, accounting records containing the information specified in subdivision (b) shall be kept by all of the following persons:

(1) Any person required to be licensed under Title 8 (commencing with Section 13700).

(2) Any person who deals in fresh or frozen fish for profit.

(b) The accounting records shall contain all of the following:

(1) The name as designated by the department of each different species of fish sold, distributed, or taken, or if not designated, the commonly used name of each species.

(2) The number of pounds sold, distributed, or taken of each different species.

(3) The name of the person to whom the fish were sold or distributed.

(4) The name, address, and phone number of the seller or distributor.

(5) The date of sale.

(6) The price paid.

(7) The intended use of the fish.

(c) Accounting record information required by this section that is transmitted from any person identified in subdivision (a) to any business that deals in fish for profit shall be in the English language.

(d) The accounting records shall be maintained within the state by both buyer and seller for a period of three years. Upon request, the records shall be open for inspection during normal business hours by the department.

Comment. Section 14600 restates former Fish and Game Code Section 8050 without substantive change.

Staff Note. Proposed Section 14600 is intended to restate existing Fish and Game Code Section 8050 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“8050. (a) In addition to the receipt required in Section 8043, every person licensed under Article 7 (commencing with Section 8030), and any commercial fisherman who sells fish to persons who are not licensed under Article 7 (commencing with Section 8030), and any person who deals in fresh or frozen fish for profit, shall keep accounting records in which all of the following shall be recorded:

(1) The names of the different species.

(2) The number of pounds sold, distributed, or taken of each different species.

(3) The name of the person to whom the fish were sold or distributed.

(4) The name, address, and phone number of the seller or distributor.

(5) The date of sale.

(6) The price paid.

(7) The intended use.

(b) Accounting record information required by this section that is transmitted from any person identified in subdivision (a) to any business that deals in fish for profit shall be in the English language.

1 (c) The accounting records shall be maintained by both buyer and seller for a period of three
2 years and upon request, shall be open for inspection during normal business hours by the
3 department. The accounting records shall be maintained within the State of California.

4 (d) The names used for designating the species of fish shall be those in common usage unless
5 otherwise designated by the department.”

6 **The staff invites comment on whether the restatement of this provision in proposed**
7 **Section 14600 would cause any substantive change in the meaning of the provision.**

8 CHAPTER 6. PAYMENT AND USE OF TAX

9 **§ 14650. Quarterly payment to department**

10 14650. (a) Landing taxes imposed by this title shall be paid quarterly to the
11 department, within 30 days after the close of each quarter.

12 (b) If any landing tax is not paid within 30 days after the close of the quarter for
13 which it is due, the department shall collect amounts owing under the procedures
14 prescribed for sales and use taxes provided in Chapter 5 (commencing with
15 Section 6451) and Chapter 6 (commencing with Section 6701) of Part 1 of
16 Division 2 of the Revenue and Taxation Code, insofar as they may be applicable,
17 and for those purposes, “board” means the department and “the date on which the
18 tax became due and payable” means that date 30 days after the close of the quarter
19 for which it is due.

20 **Comment.** Section 14650 continues former Fish and Game Code Section 8053 without
21 substantive change.

22 **§ 14655. Use of landing tax**

23 14655. Except as otherwise provided in this title, all moneys collected pursuant
24 to this title shall be paid to the department, and shall be expended for the patrol of
25 packing plants, inspection and regulation of the fishing industry, and conservation
26 work for the benefit of the commercial fishing industries.

27 **Comment.** Section 14655 continues former Fish and Game Code Section 8056 without
28 substantive change.

29 **§ 14660. Exceptions to use of landing tax**

30 14660. Landing taxes shall be used only for the administration of laws relating
31 to the commercial fishing industry, except as follows:

32 (a) Not less than 90 percent of the landing tax on herring taken for roe shall be
33 expended for research and management activities to maintain and enhance the
34 herring resources within state waters.

35 (b) Not less than 90 percent of the landing tax on thresher shark or bonito
36 (mako) shark shall be expended for the study required by, and for the costs of
37 administering, **Article 16 (commencing with Section 8560) of Chapter 2.**

38 **Comment.** Section 14660 continues former Fish and Game Code Section 8052 without
39 substantive change.

1 **§ 14665. Overpayment of tax**

2 14665. (a) If the department determines that any tax or penalty has been paid
3 more than once or has been erroneously or illegally collected or computed, the
4 department shall set forth that fact in the records of the department. The excess
5 amount collected or paid shall be credited on any amounts then due and payable
6 from the person under this part, and the balance shall be refunded to the person, or
7 his successors, administrators, or executors.

8 (b) In the event of overpayment of any of the taxes imposed by this title, the
9 taxpayer may file a claim for refund or a claim for credit with the department. No
10 refund or credit shall be approved by the department unless the claim is filed with
11 the department within six months after the close of the calendar year in which the
12 overpayment was made.

13 (c) Every claim for refund or credit for overpayment of a landing tax shall be in
14 writing, and shall state the specific grounds upon which the claim is founded.

15 (d) Failure to file a claim for refund or credit within the time prescribed in this
16 title constitutes a waiver of any demand against the state on account of
17 overpayment of a landing tax or taxes.

18 (e) Within 30 days after disallowing any claim for refund or credit for
19 overpayment of a landing tax in whole or in part, the department shall serve notice
20 of its action on the claimant, either personally or by mail. If served by mail,
21 service shall be made pursuant to Section 1013 of the Code of Civil Procedure,
22 and shall be addressed to the licensee at his or her address as it appears in the
23 records of the department, but the service shall be deemed complete at the time of
24 the deposit of the notice in the mail without extension of time for any reason.

25 (f) Interest shall be paid upon any overpayment of landing tax at the rate of one-
26 half of 1 percent per month from the date of overpayment. The interest shall be
27 paid to the date the claim for refund or credit is approved by the department.

28 (g) If the department determines that any overpayment of a landing tax has been
29 made intentionally or by reason of carelessness, it shall not allow any interest on
30 that overpayment.

31 **Comment.** Subdivision (a) of Section 14665 continues former Fish and Game Code Section
32 8057 without substantive change.

33 Subdivision (b) continues former Fish and Game Code Section 8058 without substantive
34 change.

35 Subdivision (c) continues former Fish and Game Code Section 8059 without substantive
36 change.

37 Subdivision (d) continues former Fish and Game Code Section 8060 without substantive
38 change.

39 Subdivision (e) continues former Fish and Game Code Section 8061 without substantive
40 change.

41 Subdivision (f) continues former Fish and Game Code Section 8062 without substantive
42 change.

43 Subdivision (g) continues former Fish and Game Code Section 8063 without substantive
44 change.

1 **§ 14670. Legal process to prevent collection of tax**

2 14670. No injunction or writ of mandate or other legal or equitable process shall
3 issue in any suit, action, or proceeding in any court, against this state, or against
4 any officer of the state, to prevent or enjoin the collection under this title of any
5 landing tax.

6 **Comment.** Section 14670 continues former Fish and Game Code Section 8064 without
7 substantive change.

8 **§ 14675. Legal process to recover overpaid landing tax**

9 14675. (a) No suit or proceeding shall be maintained in any court for the
10 recovery of any amount of landing tax alleged to have been erroneously paid or
11 erroneously or illegally determined or collected, unless a claim for refund or credit
12 has been duly filed pursuant to Section 14665.

13 (b) Within 90 days after the mailing of the notice of the department's action
14 upon a claim filed pursuant to Section 14665, the claimant may bring an action
15 against the department on the grounds set forth in the claim, in a court of
16 competent jurisdiction in any city or city and county of this state in which the
17 Attorney General has an office, for the recovery of the whole or any part of the
18 amount with respect to which the claim has been disallowed. Failure to bring the
19 action within the time specified constitutes a waiver of any demand against the
20 state on account of alleged overpayments.

21 (c) If the department fails to mail notice of action on a claim for refund or credit
22 for overpayment of a landing tax within six months after the claim is filed, the
23 claimant may, prior to the mailing of notice by the department of its action on the
24 claim, consider the claim disallowed and bring an action against the department on
25 the grounds set forth in the claim for the recovery of the whole or any part of the
26 amount claimed as an overpayment.

27 (d) If judgment in an action against the department is rendered for the plaintiff,
28 the amount of the judgment shall first be credited on any landing tax due and
29 payable from the plaintiff to the state under this title. The balance of the judgment
30 shall be refunded to the plaintiff.

31 (e) In any judgment, interest shall be allowed at the legal rate of interest on
32 unsatisfied judgments, as provided in Section 685.010 of the Code of Civil
33 Procedure, upon the amount found to have been illegally collected, from the date
34 of payment of the amount to the date of allowance of credit on account of the
35 judgment, or to a date to be determined by the department, preceding the date of
36 the refund warrant by not more than 30 days.

37 (f) A judgment shall not be rendered in favor of the plaintiff in any action
38 brought against the department to recover any amount paid, when the action is
39 brought by or in the name of an assignee of the person paying the amount or by
40 any person other than the person who paid the amount.

41 **Comment.** Subdivision (a) of Section 14675 continues former Fish and Game Code Section
42 8065 without substantive change.

1 Subdivision (b) continues former Fish and Game Code Section 8066 without substantive
2 change.

3 Subdivision (c) continues former Fish and Game Code Section 8067 without change.

4 Subdivision (d) continues former Fish and Game Code Section 8068 without substantive
5 change.

6 Subdivision (e) continues former Fish and Game Code Section 8069 without substantive
7 change.

8 Subdivision (f) continues former Fish and Game Code Section 8070 without substantive
9 change.

10 CHAPTER 7. VIOLATIONS

11 **§ 14700. Suspension or revocation of commercial fishing license or privileges**

12 14700. The commission, upon recommendation of the department, may suspend
13 or revoke the commercial fishing privileges of any commercial fisher, or the
14 license of any person required to be licensed under Title 8 (commencing with
15 Section 13700), who is convicted of a violation of this title.

16 **Comment.** Section 14700 continues the part of former Fish and Game Code Section 8025(a)
17 applicable to violations of Article 7.5 (commencing with Fish and Game Code Section 8010) of
18 Chapter 1 of Part 3 of Division 6 of the former Fish and Game Code without substantive change.

19 CHAPTER 8. MISCELLANEOUS PROVISIONS

20 **§ 14750. Weighmasters**

21 14750 A fish retailer who sells directly to the ultimate consumer, or a
22 commercial fisher who sells or delivers fish that the fisher has taken, to a person
23 who is not licensed as a fish receiver, shall not be considered a weighmaster for
24 purposes of Chapter 7 (commencing with Section 12700) of Division 5 of the
25 Business and Professions Code.

26 **Comment.** Section 14750 restates former Fish and Game Code Section 8043.2(b) without
27 substantive change.

28 **Staff Note.** Proposed Section 14750 is intended to restate existing Fish and Game Code
29 Section 8043.2(b) to clarify the meaning of that provision, without changing its substantive effect.
30 The existing provision reads as follows:

31 “8043.2. (b) A commercial fisherman licensed pursuant to Section 8033.5 who sells directly to
32 the ultimate consumer, or a commercial fisherman who sells or delivers fish that the fisherman
33 has taken to any person who is not licensed under Article 7 (commencing with Section 8030) to
34 conduct the activities of a fish receiver, shall not be considered a weighmaster for purposes of
35 Chapter 7 (commencing with Section 12700) of Division 5 of the Business and Professions
36 Code.”

37 **The staff invites comment on whether the restatement of this provision in proposed**
38 **Section 14750 would cause any substantive change in the meaning of the provision.**

39 **§ 14755. Requirement to make catch available for inspection and sampling**

40 14755. A fish retailer, upon request by an authorized agent or employee of the
41 department, shall immediately make available all fish in the retailer’s possession

1 for inspection and sampling by the agent or employee. Pursuant to **Section 8226**,
2 the fish retailer shall relinquish the head from any sampled salmon with a missing
3 adipose fin.

4 **Comment.** Section 14755 restates former Fish and Game Code Section 8043.2(c) without
5 substantive change.

6 **Staff Note.** Proposed Section 14755 is intended to restate existing Fish and Game Code
7 Section 8043.2(c) to clarify the meaning of that provision, without changing its substantive effect.
8 The existing provision reads as follows:

9 “8043.2. (c) A commercial fisherman selling his or her own catch to the ultimate customer,
10 upon request by an authorized agent or employee of the department, shall immediately make
11 available all fish in possession of the fisherman for inspection and sampling by the agent or
12 employee. Pursuant to Section 8226, the fisherman shall relinquish the head from any sampled
13 salmon with a missing adipose fin.”

14 **The staff invites comment on whether the restatement of this provision in proposed**
15 **Section 14755 would cause any substantive change in the meaning of the provision.**

16 TITLE 10. FISH PROCESSING

17 CHAPTER 1. GENERAL PROVISIONS

18 § 14800. Definitions

19 14800. As used in this title:

20 (a) “Reduction plant” means any plant used in the reduction or conversion of
21 fish into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products
22 or byproducts.

23 (b) “Packer” means any person canning fish or preserving fish by the common
24 methods of drying, salting, pickling, smoking, cold packing, or vacuum packing.

25 (c) “Fish offal” means the head, viscera, or other parts of fish taken off in
26 preparing for canning, preserving, packing, and preparing for consumption in a
27 fresh state.

28 (d) “Stamp,” except where otherwise specified, includes an electronic validation
29 of privileges issued to the licensee.

30 **Comment.** Section 14800 continues former Fish and Game Code Section 7700 without
31 substantive change.

32 § 14805. Enforcement of title

33 14805. The commission may make and enforce any regulation that is necessary
34 or convenient for carrying out any power, authority, or jurisdiction conferred
35 under this title.

36 **Comment.** Section 14805 continues former Fish and Game Code Section 7708 without
37 substantive change.

38 § 14810. Commission regulation

39 14810. The commission may regulate and control fishing boats, barges, lighters

1 or tenders, receptacles or vehicles containing fish, commercial fishers, packers,
2 reduction plants, plants where fish products are manufactured, and dealers in fish
3 or fishery products, insofar as necessary to insure the taking and delivery of fish
4 and fishery products in a wholesome and sanitary condition to canning, packing or
5 preserving plants, or to any plant where fishery products are manufactured, or to
6 any fresh fish dealer, and to prevent deterioration and waste of fish.

7 **Comment.** Section 14810 continues former Fish and Game Code Section 7701 without
8 substantive change.

9 **§ 14815. Department inspection**

10 14815. The department may enter and examine any canning, packing,
11 preserving, or reduction plant, or place of business where fish or other fishery
12 products are packed, preserved, manufactured, bought or sold, or board any
13 fishing boat, barge, lighter, tender, or vehicle or receptacle containing fish, and
14 ascertain the amount of fish received, or kind and amount of fishery products
15 packed or manufactured and the number and size of containers or cans for fishery
16 products purchased, received, used, or on hand and may examine any books and
17 records containing any account of fish caught, bought, canned, packed, stored or
18 sold.

19 **Comment.** Section 14815 continues former Fish and Game Code Section 7702 without
20 change.

21 **§ 14820. Grading of fish by commission**

22 14820. The commission may establish grades for different varieties of fish or
23 fishery products, which shall be conformed to by all of the following persons or
24 entities:

25 (a) A person who takes or uses sardines for bait.

26 (b) A person who delivers fish or other fishery products to packers or to fresh
27 fish dealers.

28 (c) A packer of fish.

29 (d) A fish dealer.

30 (e) A manufacturer of fish products.

31 **Comment.** Section 14820 continues former Fish and Game Code Section 7703 without
32 substantive change.

33 **CHAPTER 2. REDUCTION PERMITS AND LICENSES**

34 **§ 14850. Authority of commission**

35 14850. The commission may grant a permit, subject to regulations it may
36 prescribe, to take and use fish by a reduction or extraction process.

37 **Comment.** Section 14850 continues former Fish and Game Code Section 8075 without
38 substantive change.

1 **§ 14855. Required finding**

2 14855. No permit shall be issued except after a public hearing and a finding by
3 the commission that the granting of a permit would promote the economic
4 utilization of the fish resources of the state in the public interest. In making that
5 finding, the commission shall take into consideration the interest of the people of
6 the state in the utilization and conservation of the fish supply, and all economic
7 and other factors relating to that utilization and conservation, including the
8 efficient and economical operation of reduction plants.

9 **Comment.** Section 14855 continues former Fish and Game Code Section 8077 without
10 substantive change.

11 **§ 14860. Hearing**

12 14860. A hearing pursuant to this article shall be held within 30 days after
13 application for a permit, upon notice that the commission shall prescribe. The
14 commission may extend a hearing from time to time for a total period of not more
15 than 30 days.

16 **Comment.** Section 14860 continues former Fish and Game Code Section 8078 without
17 substantive change.

18 **§ 14865. Limit on number of permits**

19 14865. The commission shall, whenever necessary to prevent overexpansion,
20 insure the efficient and economical operation of reduction plants, or otherwise
21 carry out the provisions of this chapter, limit the total number of permits that are
22 granted.

23 **Comment.** Section 14865 continues former Fish and Game Code Section 8079 without
24 substantive change.

25 **§ 14870. License to dispose of dead or dying fish**

26 14870. Notwithstanding any other provision of this code or regulation adopted
27 pursuant to this code, the director or a representative appointed by the director,
28 may, without notice or a hearing, grant a license to a fish reduction plant to
29 dispose of dead or dying fish. The license may be immediately issued by the
30 director or the director's representative whenever that person determines, in that
31 person's discretion, that an emergency situation exists. The estimated tonnage to
32 be reduced shall be specified as a limit in the license.

33 **Comment.** Section 14870 continues former Fish and Game Code Section 8079.1 without
34 change.

35 **§ 14875. No limit on court authority**

36 14875. Nothing in this chapter restricts the power of any court in any proceeding
37 relating to any matter arising out of the provisions of this article.

38 **Comment.** Section 14875 continues former Fish and Game Code Section 8080 without
39 substantive change.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

CHAPTER 3. VIOLATIONS

Article 1. Required Practices

§ 14950. Containers to allow viewing of fish and fish offal

14950. All chutes or conveyors used to convey fish or fish offal to any receptacle, and all receptacles containing fish or fish offal to be used for reduction purposes, shall be so constructed and maintained that the fish or fish offal is at all times open to view and inspection.

Comment. Section 14950 continues former Fish and Game Code Section 7705 without substantive change.

Article 2. Prohibitions

§ 15000. Affirmative authorization of fish reduction required

15000. Except as permitted by this code, it is unlawful to use a fish, except fish offal, in a reduction plant or by a reduction process.

Comment. Section 15000 continues former Fish and Game Code Section 7704(b) without change.

§ 15005. Prohibited reduction

15005. No reduction of fish is allowed that may tend to deplete a species, or result in waste or deterioration of fish.

Comment. Section 15005 continues former Fish and Game Code Section 8076 without substantive change.

§ 15010. Unloading or weighing of specified fish

15010. (a) No sardines, anchovies, mackerel, or squid intended for or used in any cannery shall be unloaded from any vessel, except at a weighing or measuring device approved by the Bureau of Weights and Measures.

(b) Those products shall be weighed by a public weighmaster licensed as an individual under the laws of this state, and a receipt as to that weight shall be immediately issued by the weighmaster to the commercial fisher at the time of receipt of the products.

(c) Copies of the receipt shall be handled in the manner provided in Chapter 3 (commencing with Section 14300) and Chapter 4 (commencing with Section 14500) of Title 9.

Comment. Section 15010 continues former Fish and Game Code Section 7702.1 without substantive change.

Article 3. Enforcement

§ 15050. Prosecution of processing violation

15050. (a) A written complaint may be made to the commission against any person who violates any provision of this title, or any regulation adopted pursuant to any provision of this title, by any person having information or knowledge of the violation. If the person charged in the complaint is found guilty of the offense charged, the commission may suspend, for a period not to exceed 90 days, any license issued by any state board or officer to that person to take, buy, sell, can, or preserve fish or fishery products. No other license shall be issued to that person during the period of suspension.

(b) The proceedings on a complaint shall be conducted at one of the commission's regularly scheduled meetings.

Comment. Section 15050 restates former Fish and Game Code Section 7706 without substantive change.

Staff Note. Proposed Section 15050 is intended to restate existing Fish and Game Code Section 7706 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

"7706. A written complaint may be made to the commission against any person who violates Section 7700 to 7705, inclusive, 7707, 7708, 8075 to 8080, inclusive, or 8153, or any regulation adopted thereunder, by any person having information or knowledge of the violation. If the person charged is found guilty of the offense charged, the commission may suspend, for a period not to exceed 90 days, any license issued by any state board or officer to that person to take, buy, sell, can, or preserve fish or fishery products. No other license shall be issued to that person during the period of suspension. The proceedings shall be conducted at one of the commission's regularly scheduled meetings."

The staff invites comment on whether the restatement of this provision in proposed Section 15050 would cause any substantive change in the meaning of the provision.

§ 15055. Nuisance

15055. (a) Any reduction plant in which any fish or any part thereof is used in violation of any provision of this title, or in violation of any regulation of the commission, is a nuisance.

(b) Whenever the existence of such nuisance is shown to the satisfaction of the superior court of the county in which the reduction plant is situated, by complaint filed in the name of the people of the State of California, the court may issue a temporary injunction to abate and prevent the continuance or recurrence of such the nuisance.

(c) If the existence of a nuisance is established in such action, an order of abatement shall be entered as part of the judgment in the case, which shall direct the closing, for 12 months, of the building or place where the nuisance was maintained, and, during that time, the building or place shall be and remain in the custody of the court.

Comment. Section 15055 restates former Fish and Game Code Section 7707 without substantive change.

1 **☞ Staff Note.** Proposed Section 15055 is intended to restate existing Fish and Game Code
2 Section 7707 to clarify the meaning of that provision, without changing its substantive effect. The
3 existing provision reads as follows:

4 “7707. Any reduction plant in which any fish or any part thereof is used in violation of the
5 provisions of Sections 7700 to 7706, inclusive, 7708, 8151, 8153 to 8157, inclusive, and 8075 to
6 8080, inclusive, of this code, or in violation of any regulation of the commission, is a nuisance.
7 Whenever the existence of such nuisance is shown to the satisfaction of the superior court of the
8 county in which the reduction plant is situated, by complaint filed in the name of the people of the
9 State of California, the court may issue a temporary injunction to abate and prevent the
10 continuance or recurrence of such nuisance. If the existence of a nuisance is established in such
11 action, an order of abatement shall be entered as part of the judgment in the case, which order
12 shall direct the closing, for 12 months, of the building or place where such nuisance was
13 maintained, and, during such time, the building or place shall be and remain in the custody of the
14 court.”

15 Proposed Section 15055 would replace the cross-references in the first sentence of Section
16 7707 with a reference to all provisions in the title in which proposed Section 15055 would be
17 included. That replacement is based on the staff’s belief that this title includes the continuation of
18 all provisions cross-referenced in Section 7707, other than sections that have been repealed and
19 not continued in substance in another provision.

20 The sections cross-referenced in Section 7707 that have been repealed read as follows:

21 8151. Sardines for use in a reduction plant, or by a packer, may be taken only in accordance
22 with this article, and at the following times in the following places:

23 (a) In District 4,

24 (b) Elsewhere in the State,

25 8154. Any person engaged in canning sardines may take and use in a reduction plant 32 1/2
26 percent of the amount of sardines actually received at his canning plant during each calendar
27 month.

28 8155. In determining the percentage of sardines that may be used for reduction purposes by a
29 cannery, it shall be deemed that a ton of sardines suitable in size and condition for canning will
30 produce 960 one-pound oval cans of sardines, or the equivalent if other size cans are used.

31 8156. A person engaged in preserving sardines by the common methods of drying, salting,
32 smoking, or pickling may use in a reduction plant or by a reduction process such sardines, or fish
33 delivered mixed with sardines, as are unfit for drying, salting, smoking, or pickling, which are not
34 intentionally taken into the plant in a condition unfit for processing for human consumption.

35 8157. Fish which are mixed with sardines when delivered to the packer are the equivalent of
36 sardines and shall be included within the percentage of the total amount of sardines received by
37 the packer during the calendar month.

38 However, while the “Section 8154” set forth above that was in existence at the time Section
39 7707 was enacted was repealed in 1973, the Legislature enacted a new “Section 8154” in 1989,
40 and *that* section remains an existing code section today. See 1988 Cal. Stat. ch. 858. That Section
41 8154 reads as follows:

42 “8154. No person shall receive, possess, or sell sardines for any purpose except for that
43 purpose specified on the fish receipt completed at the time of landing of those sardines pursuant
44 to Section 8043.”

45 Nevertheless, nothing in the legislative history of this enactment or the text of this provision
46 suggests the Legislature intended or contemplated that this provision would be a cross-reference
47 in Section 7707, and proposed Section 15055 would also not include this provision as a cross-
48 reference.

1 **The staff invites comment on whether the restatement of existing Section 7707 in**
2 **proposed Section 15055 would cause any substantive change in the intended meaning of**
3 **Section 7707.**

4 TITLE 11. PASSENGER FISHING BOATS

5 § 15100. Application of chapter

6 15100. This title applies only to a boat or vessel whose owner or his or her
7 employee or other representative is with it when it is used for fishing.

8 **Comment.** Section 15100 continues the second paragraph of former Fish and Game Code
9 Section 7920 without substantive change.

10 § 15105. Activity requiring license

11 15105. (a) Except as provided in subdivision (b), owning a commercial
12 passenger fishing boat requires a commercial passenger fishing boat license.

13 (b) Operating a guide boat does not require a commercial passenger fishing boat
14 license.

15 **Comment.** Section 15105 restates the first and third paragraphs of former Fish and Game Code
16 Section 7920 without substantive change. See also Sections 257 (“commercial passenger fishing
17 boat”), 345 (“guide boat”).

18 **Staff Note.** Proposed Section 15105 is intended to restate the first and third paragraphs of
19 existing Fish and Game Code Section 7920 to improve the clarity of those provisions, without
20 changing their substantive meaning. The existing provisions read as follows:

21 “7920. The owner of any boat or vessel who, for profit, permits any person to take fish, shall
22 procure a commercial passenger fishing boat license.

23

24 A person operating a guide boat, as defined in Section 46, is not required to obtain a
25 commercial passenger fishing boat license.”

26 **The staff invites comment on whether proposed Section 15105 accurately continues the**
27 **intended meaning of the first and third paragraphs of existing Section 7920.**

28 § 15110. Required commercial boat registration

29 15110. An applicant for a commercial passenger fishing vessel license is
30 required to hold a commercial boat registration issued pursuant to **Section 7881.**

31 **Comment.** Section 15110 restates the second sentence of former Fish and Game Code Section
32 7921 without substantive change.

33 **Staff Note.** Proposed Section 15110 is intended to restate the second sentence of existing Fish
34 and Game Code Section 7921 to improve the clarity of that provision, without changing its
35 substantive meaning. The existing provision reads as follows:

36 “7921. The commercial passenger fishing vessel license shall be issued to the holder of a
37 commercial boat registration issued pursuant to Section 7881.”

38 **The staff invites comment on whether proposed Section 15110 accurately continues the**
39 **intended meaning of the second sentence of existing Section 7921.**

1 § 15115. License fee

2 15115. The base fee for a commercial passenger fishing boat license is two
3 hundred fifty dollars (\$250) in the 2004 license year, which shall be adjusted
4 annually thereafter pursuant to Section 2780.

5 **Comment.** Section 15115 continues the first sentence of former Fish and Game Code Section
6 7921 without substantive change.


7 § 15120. Maintenance of records

8 15120. (a) A commercial passenger fishing boat owner shall keep a true record
9 in the English language of all fish taken, and shall comply with all regulations that
10 the commission may adopt. The record and the information contained in it shall be
11 confidential, and the record shall not be a public record.

12 (b) Subdivision (a) does not apply to the taking, transporting, or selling of live
13 fresh-water fish for bait.

14 **Comment.** Subdivision (a) of Section 15120 restates former Fish and Game Code Section
15 7923 without substantive change.

16 Subdivision (b) continues the part of the fourth paragraph of former Fish and Game Code
17 Section 8460 applicable to former Fish and Game Code Section 7923 without substantive change.

18  **Staff Notes.** (1) Proposed Section 15120(a) is intended to restate existing Fish and Game
19 Code Section 7923 to improve the clarity of that provision, without changing its substantive
20 meaning. The existing provision reads as follows:

21 “7923. The holder of a license shall keep a true record in the English language of all fish taken,
22 and shall comply with such regulations as the commission may prescribe. Such a record and the
23 information contained in it shall be confidential, and the record shall not be a public record.”

24 **The staff invites comment on whether proposed Section 15120(a) accurately continues the
25 intended meaning of existing Section 7923.**

26 (2) The fourth paragraph of existing Fish and Game Code Section 8460 (which would be
27 continued in part by proposed Section 15120(b)) provides as follows (with italics added for
28 emphasis):

29 “The provisions of this code on commercial fishing, packing, or processing licenses, *on*
30 *reports by persons engaged in the commercial fish industry, and on statements required by*
31 *owners or operators of fishing boats,* do not apply to the taking, transporting, or selling of live
32 fresh-water fish for bait.”

33 **The staff invites comment on whether proposed Section 15120(b) correctly states the
34 application of the fourth paragraph of existing Section 8460 to existing Section 7923.**

35 § 15125. Forfeiture, suspension, or revocation of license

36 15125. A license issued under this title is subject to forfeiture, suspension, or
37 revocation for a violation of **Section 7121**, or for any offense for which a
38 commercial fishing license may be forfeited, suspended, or revoked.

39 **Comment.** Section 15125 continues former Fish and Game Code Section 7924 without
40 substantive change.

41 § 15130. Fishing from commercial passenger fishing boat

42 15130. The owner or operator of a commercial passenger fishing boat shall not
43 permit any person to fish from that boat without having in his or her possession a

1 valid California sport fishing license if required, and any required stamp, report
2 card, and validation.

3 **Comment.** Section 15130 restates former Fish and Game Code Section 7147 without
4 substantive change.

5 **Staff Note.** Proposed Section 15130 is intended to restate existing Fish and Game Code
6 Section 7147 to improve the clarity of that provision, without changing its substantive effect. The
7 existing provision reads as follows:

8 “7147. The owner or operator of a boat or vessel licensed pursuant to Section 7920 shall not
9 permit any person to fish from that boat or vessel unless that person has, in his or her possession,
10 a valid California sport fishing license and any required stamp, report card, or validation issued
11 pursuant to this code.”

12 As stated, this section would seem to impose a license requirement on all persons fishing from
13 a boat or vessel, even persons who are otherwise exempt from licensing requirements (e.g., a
14 child under the age of 16). The staff spoke informally with Department staff, who confirmed that
15 existing Section 7147 is not understood to apply to those who are exempt from licensing
16 requirements. Proposed Section 15130 would codify that understanding.

17 **The staff invites comment on whether proposed Section 15130 accurately states existing**
18 **law.**

19 **§ 15135. License suspension for unlawful sale or purchase of fish**

20 15135. Notwithstanding **Sections 12000, 12001, and 12002**, the commercial
21 fishing license of the master of a commercial passenger fishing boat may be
22 revoked or suspended by the commission, when requested by the department, for a
23 period not to exceed one year, upon conviction of that master, or upon conviction
24 of a person acting as and in fact the master’s agent, servant, employee, or
25 otherwise acting under the master’s direction or control, for a violation of **Section**
26 **7121** or a regulation adopted pursuant to that section, if the fish in question were
27 taken from that boat.

28 **Comment.** Section 15135 restates former Fish and Game Code Section 12002.7 without
29 substantive change. See also Section 367 (“master”).

30 **Staff Notes.** (1) Proposed Section 15135 is intended to restate existing Fish and Game Code
31 Section 12002.7 to improve the clarity of that provision, without changing its substantive effect.
32 The existing provision reads as follows:

33 “12002.7. Notwithstanding Sections 12000, 12001, and 12002, the commercial fishing license
34 of the master of a vessel may be revoked or suspended by the commission, when requested by the
35 department, for a period not to exceed one year, upon conviction of the master or his agent,
36 servant, employee, or person acting under his direction or control, for a violation of Section 7121
37 or the regulations adopted pursuant thereto, if the fish in question were taken from a vessel
38 licensed pursuant to Section 7920.

39 However, a master’s license shall not be revoked for the conviction of a violation occurring
40 when the person convicted was not acting as the master’s agent, servant, employee, or acting
41 under his direction or control.

42 The master of a vessel is the person on board the vessel who is in charge of the vessel.”

43 **The staff invites comment on whether proposed Section 15135 accurately continues the**
44 **intended meaning of existing Section 12002.7.**

45 (2) Existing Section 12002.7 (which would be continued by proposed Section 15135) provides
46 for the revocation or suspension of the commercial fishing license of the master of a commercial

1 passenger fishing boat, based on a passenger violating other specified law involving fish taken
2 from that boat.

3 Existing Section 12002.4 (which would be continued by proposed Section 15140) provides for
4 the revocation or suspension of the commercial boat registration of a commercial passenger
5 fishing boat, based on very similar conduct. However, there are some discrepancies between the
6 two sections that may not have been intended:

7 • Section 12002.7 applies only when fish are taken, whereas Section 12002.4 expressly
8 applies when fish or amphibia are taken. Although the existing generally applicable definition of
9 the term “fish” does include amphibians (see existing Section 45), an inference could be drawn
10 that Section 12002.7 does not apply when amphibians are taken, based on the express inclusion of
11 a reference to amphibians, only in Section 12002.4.

12 • A revocation or suspension under Section 12002.7 may be imposed based on the conduct of
13 any person acting under the master’s direction or control. A revocation or suspension under
14 Section 12002.4 also may be imposed based on the conduct of any person under the registrant’s
15 direction or control, but a revocation or suspension under Section 12002.4 also requires, in that
16 event, that the master of the vessel, or an agent or employee of the registrant, have had knowledge
17 of the commission of the violation resulting in the conviction.

18 **The staff invites public comment on whether these discrepancies should be reconciled.**

19 **§ 15140. Commercial boat registration suspension for unlawful sale or purchase of fish**

20 15140. (a) Notwithstanding **Sections 12000, 12001, and 12002**, the commercial
21 boat registration of a commercial passenger fishing boat may be revoked or
22 suspended by the commission, when requested by the department, for a period not
23 to exceed one year, upon conviction of the registrant, or the registrant’s agent,
24 servant, employee, or any other person acting under the registrant’s direction or
25 control, for a violation of **Section 7121** or a regulation adopted pursuant to that
26 section, if the violation in question involves that boat.

27 (b) Notwithstanding **Sections 12000, 12001, and 12002**, the commercial boat
28 registration of a commercial passenger fishing boat may be revoked or suspended
29 by the commission, when requested by the department, for a period not to exceed
30 one year, upon conviction of any person other than a person specified in
31 subdivision (a), for a violation of **Section 7121**, if the fish or amphibians involved
32 in the violation were taken from that boat, and the person committing the violation
33 had committed a prior violation of **Section 7121** involving that boat within the
34 previous three years.

35 (c) A commercial boat registration shall not be revoked under this section for a
36 violation committed without the knowledge of the master, or an agent or employee
37 of the registrant.

38 **Comment.** Section 15140 restates former Fish and Game Code Section 12002.4 without
39 substantive change. See also Section 367 (“master”).

40 **Staff Note.** Proposed Section 15140 is intended to restate existing Fish and Game Code
41 Section 12002.4 to improve the clarity of that provision, without changing its substantive effect.
42 The existing provision reads as follows:

43 “12002.4. (a) Notwithstanding Sections 12000, 12001, and 12002, a commercial boat
44 registration may be revoked or suspended by the commission, when requested by the department,
45 for a period not to exceed one year, upon conviction of the registrant, or the registrant’s agent,
46 servant, employee, or any other person acting under the registrant’s direction or control, for a

1 violation of Section 7121 or the regulations adopted pursuant thereto, if the violation in question
2 involved a vessel licensed pursuant to Section 7920.

3 (b) Notwithstanding Sections 12000, 12001, and 12002, a commercial boat registration of a
4 vessel licensed pursuant to Section 7920 may be revoked or suspended by the commission, when
5 requested by the department, for a period not to exceed one year, upon conviction of any other
6 person for a violation of Section 7121, if the fish or amphibia involved in the violation were taken
7 from the vessel and that person committed a prior violation of Section 7121 within three years on
8 the vessel.

9 (c) The commercial boat registration shall not be revoked under this section for a violation
10 which is unrelated to the vessel for which the commercial boat registration is to be revoked. Any
11 violation committed without the knowledge of the master, or an agent or employee of the
12 registrant, is unrelated to the vessel.”

13 **The staff invites comment on whether proposed Section 15140 accurately continues the**
14 **intended meaning of existing Section 12002.4.**

15 TITLE 12. LIVE FRESH-WATER FISH FOR BAIT

16 § 15200. When license required

17 15200. (a) The take, transport, or sale, for profit, of live fresh-water fish for bait
18 requires a live fresh-water bait fish license. The commission may adopt
19 regulations governing these licenses.

20 (b) A live fresh-water bait fish license is not required for the raising, possession,
21 or sale of live fresh-water fish for bait under authority of Title 15 (commencing
22 with Section 15500).

23 **Comment.** Subdivision (a) of Section 15200 restates the first paragraph of former Fish and
24 Game Code Section 8460 without substantive change.

25 Subdivision (b) continues the third paragraph of former Fish and Game Code Section 8460
26 without substantive change.

27 **Staff Note.** Proposed Section 15200(a) is intended to restate the first paragraph of existing
28 Fish and Game Code Section 8460 to improve the clarity of that provision, without changing its
29 substantive effect. The existing provision reads as follows:

30 “Any person engaged for profit in the taking, transporting, or selling of live fresh-water fish for
31 bait shall first obtain from the department a live fresh-water bait fish license to possess the fish
32 for those purposes. The commission may prescribe regulations governing these licenses.”

33 **The staff invites comment on whether proposed Section 15200 accurately continues the**
34 **intended meaning of the first paragraph of existing Section 8460.**

35 § 15205. Term of license

36 15205. A live fresh-water bait fish license shall be issued for a calendar year, or,
37 if issued after the beginning of the year, for the remainder of the year.

38 **Comment.** Section 15205 continues a part of the second paragraph of former Fish and Game
39 Code Section 8460 without substantive change.

40 § 15210. License fee

41 15210. The annual fee for a live freshwater bait fish license is fifty-five dollars
42 (\$55).

1 **Comment.** Section 15210 continues former Fish and Game Code Section 8461 without
2 substantive change.

3 **§ 15215. Revocation of license**

4 15215. A live fresh-water bait fish license may be revoked for a violation of the
5 terms of the license.

6 **Comment.** Section 15215 continues a part of the second paragraph of former Fish and Game
7 Code Section 8460 without substantive change.

8 **§ 15220. Take only of permitted species**

9 15220. (a) A live fresh-water bait fish license shall authorize the taking of only
10 golden shiners, fathead minnows, and any other species the department may
11 designate, under regulations adopted by the commission.

12 (b) The commission may prohibit in any part or all parts of the state the
13 possession alive of any species of fish that the commission considers a potential
14 threat to the fisheries of the state by reason of possible escape and establishment.

15 **Comment.** Section 15220 continues former Fish and Game Code Section 8462 without
16 substantive change.

17 **§ 15225. Restriction on gear used to take certain species**

18 15225. Traps not over 24 inches in greatest length nor more than 12 inches in
19 greatest depth or width, or seines of not over 1/2-inch mesh stretched measure and
20 not more than 4 x 30 feet in size, may be used for the taking of fish of the carp and
21 minnow family (family Cyprinidae), suckers (family Catostomidae), sculpins
22 (family Cottidae), or mosquito fish (genus Gambusia). Such traps may be used
23 only in lakes and impounded waters. Such seines may be used only in lakes,
24 impounded waters, and conduits.

25 (b) Fish taken as provided in this section may be sold only as bait.

26 (c) Fish other than those named in this section that may be taken in a trap or
27 seine described in this section shall be released and returned unharmed to the
28 water where taken.

29 **Comment.** Section 15225 continues former Fish and Game Code Section 8463 without
30 substantive change.

31 **TITLE 13. COMMERCIAL FISHING REPORTS**

32 **§ 15300. Required record of fishing activities**

33 15300. (a) Except as provided in subdivision (c), the commission may require
34 the owner and operator of a commercial fishing vessel, a commercial fisher, and a
35 commercial passenger fishing boat owner, to keep and submit a complete and
36 accurate record of fishing activities in a form prescribed by the department.

37 (b) In addition to the penalty specified in **subdivision (a) of Section 12002**,
38 failure to keep and submit records pursuant to subdivision (a) may result in the

1 revocation or suspension of a license or permit by the department, or by the
2 commission when recommended by the department, for a period not to exceed one
3 year.

4 (c) This section does not apply to the taking, transporting, or selling of live
5 fresh-water fish for bait.

6 **Comment.** Subdivisions (a) and (b) of Section 15300 restate former Fish and Game Code
7 Section 8026 without substantive change.

8 Subdivision (c) continues the part of the fourth paragraph of former Fish and Game Code
9 Section 8460 applicable to former Fish and Game Code Section 8026 without substantive change.

10 **Staff Notes.** (1) Proposed Section 15300(a) and (b) are intended to restate existing Fish and
11 Game Code Section 8026 to improve the clarity of that provision, without changing its
12 substantive effect. The existing provision reads as follows:

13 “8026. (a) The commission may require the owner and operator of a commercial fishing vessel,
14 the holder of a commercial fishing license or permit, and the owner and licenseholder of a
15 commercial passenger fishing boat to keep and submit a complete and accurate record of fishing
16 activities in a form prescribed by the department.

17 (b) In addition to the penalty specified in subdivision (a) of Section 12002, failure to keep and
18 submit records pursuant to subdivision (a) may result in the revocation or suspension of a license
19 or permit by the department or the commission, when recommended by the department, for a
20 period not to exceed one year.”

21 **The staff invites comment on whether proposed Section 15300(a) and (b) accurately**
22 **continues the intended meaning of existing Section 8026.**

23 (2) The last paragraph of existing Fish and Game Code Section 8460 (which would be
24 continued in part by proposed Section 15300(c)) provides as follows (with emphasis added):

25 “The provisions of this code on *commercial fishing*, packing, or processing licenses, on reports
26 by persons engaged in the commercial fish industry, *and on statements required by owners or*
27 *operators of fishing boats*, do not apply to the taking, transporting, or selling of live fresh-water
28 fish for bait.”

29 **The staff invites comment on whether proposed Section 15300(b) correctly states the**
30 **application of the last paragraph of existing Section 8460 to existing Section 8026.**

31 **§ 15305. Confidentiality of department records**

32 15305. (a) The receipts, reports, or other records filed with the department
33 pursuant to **Article 2 (commencing with Section 7700) to Article 7.5**
34 **(commencing with Section 8040)**, inclusive, and the information contained
35 therein, shall, except as otherwise provided in this section, be confidential, and the
36 records shall not be public records. Insofar as possible, the information contained
37 in the records shall be compiled or published as summaries, so as not to disclose
38 the individual record or business of any person.

39 (b) Notwithstanding any other provision of law, the department may release the
40 confidential information described in subdivision (a) to any federal agency
41 responsible for fishery management activities, provided the information is used
42 solely for the purposes of enforcing fishery management provisions and provided
43 the information will otherwise remain confidential. The department may also
44 release this information in accordance with **Section 391** or pursuant to a court
45 order, to a public or private postsecondary institution engaged in research under

1 the terms of a legally binding confidentiality agreement, or under other conditions
2 as the commission by regulation may provide.

3 (c) All forms, logs, books, covers, documents, electronic data, software, and
4 other records of any kind issued or otherwise supplied, directly or indirectly, by
5 the department, the purpose of which is to provide a means for reports, records, or
6 other information to be filed with the department pursuant to **Article 2**
7 **(commencing with Section 7700) to Article 7.5 (commencing with Section**
8 **8040)**, inclusive, continue to be the property of the department. Those forms, logs,
9 books, covers, documents, electronic data, software, other records, and any portion
10 of any of those items remain the property of the department, whether used, unused,
11 attached, or detached from their original binding, packaging, or other medium and
12 shall be immediately surrendered upon demand to a peace officer of the
13 department acting in his or her official capacity, without being altered in any
14 manner.

15 **Comment.** Section 15305 continues former Fish and Game Code Section 8022 without
16 substantive change.

17 **§ 15310. Compilation of reports by department**

18 15310. The department shall do all of the following:

19 (a) Gather and prepare data of the commercial fisheries, showing particularly the
20 extent of the fisheries and the extent to which the various species abound.

21 (b) Make such investigations of the biology and the environment of the living
22 marine resources as will aid in the collection and preparation of the statistical
23 information necessary to determine the population dynamics of the species relative
24 to their scientific management.

25 (c) Make such investigations as will disclose the optimum sustainable yield of
26 the various marine resources.

27 (d) Determine what measures may be advisable to conserve any fishery, or to
28 enlarge and assist any fishery, where that may be done without danger to the
29 supply.

30 **Comment.** Section 15310 continues former Fish and Game Code Section 8010 without
31 substantive change.

32 **§ 15315. Suspension or revocation of commercial fishing license or privileges**

33 15315. The commission, upon recommendation of the department, may suspend
34 or revoke the commercial fishing privileges of any commercial fisher, or the
35 license of any person required to be licensed under Title 8 (commencing with
36 Section 13700), who is convicted of a violation of this title.

37 **Comment.** Section 15315 continues the part of former Fish and Game Code Section 8025(a)
38 applicable to violations of Article 6 (commencing with Fish and Game Code Section 8010) of
39 Chapter 1 of Part 3 of Division 6 of the former Fish and Game Code without substantive change.

1 TITLE 14. RESTRICTION OR CLOSURE OF FISHERIES

2 § 15400. Restriction on take based on unsustainable fishing

3 15400. (a) If the director determines, based on the best available scientific
4 information, or other relevant information that the director possesses or receives,
5 and on at least one public hearing in the area of a fishery, that taking of a species
6 in the fishery is being conducted in a manner that is not sustainable, the director
7 may order the closure of any waters or otherwise restrict the in state waters of that
8 species.

9 (b) The department shall give notice of any hearing to be held pursuant to this
10 section to the commission and its marine resources committee as far in advance of
11 the hearing date as possible.

12 (c) Any closure or restriction order shall be adopted by emergency regulation in
13 accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of
14 Title 2 of the Government Code.

15 (d) The director shall bring to the attention of the commission within seven
16 working days any regulation adopted pursuant to this section.

17 (e) Any regulation adopted shall be effective for only 30 days, unless the
18 commission extends the closure or restriction under any authority it may have, or
19 unless the director orders another closure or restriction, consistent with the
20 requirements of subdivision (a).

21 (f) Nothing in this section restricts any existing jurisdiction of the department
22 with regard to the regulation of fisheries on the high seas.

23 **Comment.** Subdivisions (a) through (e) of Section 15400 restate former Fish and Game Code
24 Section 7710(a)-(c) without substantive change.

25 Subdivision (f) continues the part of the last paragraph of former Fish and Game Code Section
26 7710 applicable to that section without change.

27 **Staff Notes.** (1) Although existing Fish and Game Code Section 7710 authorizes the director,
28 under specified circumstances, to order the closure of any waters or otherwise restrict the taking
29 “under a fishing license” of certain species, it is unlikely the Legislature intended to limit that
30 authorized restriction solely to *licensed* taking. Proposed Section 15400 (which would continue
31 existing Section 7710) would authorize the director to restrict both licensed and unlicensed
32 taking.

33 (2) Proposed Section 15400(a) is intended to restate the first sentence of existing Fish and
34 Game Code Section 7710(a) to improve the clarity of that provision, without changing its
35 substantive effect. The existing provision reads as follows:

36 “7710. (a) If the director determines, based on the best available scientific information, or other
37 relevant information that the director possesses or receives, and on at least one public hearing in
38 the area of the fishery, that taking in a fishery is being conducted in a manner that is not
39 sustainable, the director may order the closure of any waters or otherwise restrict the taking under
40 a fishing license in state waters of that species.”

41 **The staff invites comment on whether proposed Section 15400(a) accurately continues the**
42 **intended meaning of the first sentence of existing Section 7710(a).**

1 **§ 15405. Removal of restriction**

2 15405. (a) If, during the period that regulations adopted pursuant to Section
3 15400 are effective, the director determines, based on thorough and adequate
4 scientific evidence and at least one public hearing in the area of the fishery, that
5 any species or subspecies whose take was previously restricted has recovered, or
6 additional evidence indicates that the species or subspecies is not in danger of
7 irreparable injury, the director may remove the restriction on taking.

8 (b) Action to remove the restriction shall be by adoption of an emergency
9 regulation in accordance with Chapter 3.5 (commencing with Section 11340) of
10 Part 1 of Division 3 of Title 2 of the Government Code.

11 (c) The director shall bring to the attention of the Legislature, within seven
12 calendar days, any regulation adopted pursuant to this section.

13 (d) Nothing in this section restricts any existing jurisdiction of the department
14 with regard to the regulation of fisheries on the high seas.

15 **Comment.** Subdivisions (a) through (c) of Section 15405 continue the first paragraph of
16 former Fish and Game Code Section 7710.5 without substantive change.

17 Subdivision (d) continues the part of the last paragraph of former Fish and Game Code Section
18 7710 applicable to former Fish and Game Code Section 7710.5 without change.

19 **§ 15410. Appeal of closure or restriction**

20 15410. A closure or restriction under Section 15400, or the removal of a closure
21 or restriction under Section 15405, may be appealed to the commission. The
22 commission shall hear and decide the appeal within a time that is meaningful,
23 taking into account the duration of the fishery and the economics of the fishery.

24 **Comment.** Section 15410 continues former Fish and Game Code Section 7710.1 without
25 substantive change.

26 **§ 15415. Development of alternative fisheries or alternative fishing gear**

27 15415. Where a fishery is closed or restricted due to the need to protect a fishery
28 resource, marine mammals, or sea birds, or due to a conflict with other fisheries or
29 uses of the marine environment, it shall be the policy of the department and the
30 commission, consistent with budgetary and personnel considerations, to assist and
31 foster the development of alternative fisheries or alternative fishing gear for those
32 commercial fishers affected by the restriction, closure, or resource loss, including,
33 but not limited to, the issuing of experimental gear permits pursuant to **Section**
34 **8606** for alternative fishing methods or fishing gear, consistent with the policies
35 set forth in **this division**.

36 **Comment.** Section 15415 continues former Fish and Game Code Section 7712 without
37 substantive change.

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

TITLE 15. AQUACULTURE

CHAPTER 1. GENERAL PROVISIONS

§ 15500. Applicability of title

15500. Nothing in this title applies to authorized species of ornamental marine or freshwater plants or animals that are not utilized for human consumption or bait purposes and that are maintained in closed systems for personal, pet industry, or hobby purposes.

Comment. Section 15500 continues former Fish and Game Code Section 15006 without substantive change.

§ 15505. Governing provisions

15505. The business of aquaculture is governed by this title, and is exempt from **Part 3 (commencing with Section 7600) of Division 6** and any other provision of this code relating to commercial fishing, harvesting, processing, and marketing.

Comment. Section 15505 continues former Fish and Game Code Section 15000(a) without substantive change.

CHAPTER 2. ADMINISTRATION

Article 1. Agency Duties and Powers

§ 15550. Coordination of agencies

15550. (a) Except as provided in Sections 15555, 15750, 15760, and 15765, the business of aquaculture processing, distribution, and marketing is administered by the Secretary of Food and Agriculture.

(b) The director may enter into an agreement with the Secretary of Food and Agriculture for the resolution of any conflict that arises under subdivision (a).

(c) Any costs incurred by the department in implementing Sections 15555, 15750, 15760, and 15765 shall be recovered pursuant to this title.

Comment. Section 15550 continues former Fish and Game Code Section 15000(b)-(d) without substantive change.

§ 15555. Commission regulation

15555. (a) When necessary for the protection of native wildlife, the commission may regulate the transportation, purchase, possession, and sale of specific aquaculture products as provided for in this section.

(b) The commission may determine that aquaculture products shall be accompanied by a document containing any of the following information:

- (1) The name, address, and registration number of the aquaculture producer.
- (2) The species.

1 (3) The weight, volume, or count within the container.

2 (4) The date of the shipment.

3 (5) The name and address of the intended receiver.

4 (c) The commission may require that certain aquaculture products shall be
5 additionally identified as being aquaculture produced, except for the following:

6 (1) Trout.

7 (2) Catfish.

8 (3) Kelp and aquatic plants.

9 (4) Frogs and amphibia.

10 (5) All bivalve mollusks (except little neck clams).

11 (6) All members of the family Centrarchidae.

12 (7) Crayfish.

13 (8) Sea urchins.

14 (9) Shrimp and fresh water prawns.

15 (10) Crab.

16 **Comment.** Section 15555 continues former Fish and Game Code Section 15005 without
17 change.

18 **§ 15560. Preparation of environmental impact reports by department**

19 15560. (a) The department shall, in consultation with the Aquaculture
20 Development Committee, prepare programmatic environmental impact reports for
21 existing and potential commercial aquaculture operations in both coastal and
22 inland areas of the state if both of the following conditions are met:

23 (1) Funds are appropriated to the department for this purpose.

24 (2) Matching funds are provided by the aquaculture industry. For the purpose of
25 this section, “matching funds” include, but are not limited to, any funds expended
26 by the aquaculture industry before January 1, 2006, for the preparation of a
27 programmatic environmental impact report.

28 (b) If the final programmatic environmental impact report is prepared pursuant
29 to subdivision (a) for coastal marine finfish aquaculture projects and approved by
30 the commission under the California Environmental Quality Act set forth in
31 Division 13 (commencing with Section 21000) of the Public Resources Code, the
32 report shall provide a framework for managing marine finfish aquaculture in an
33 environmentally sustainable manner that, at a minimum, adequately considers all
34 of the following factors:

35 (1) Appropriate areas for siting marine finfish aquaculture operations to avoid
36 adverse impacts, and minimize any unavoidable impacts, on user groups, public
37 trust values, and the marine environment.

38 (2) The effects on sensitive ocean and coastal habitats.

39 (3) The effects on marine ecosystems, commercial and recreational fishing, and
40 other important ocean uses.

41 (4) The effects on other plant and animal species, especially species protected or
42 recovering under state and federal law.

1 (5) The effects of the use of chemical and biological products and pollutants and
2 nutrient wastes on human health and the marine environment.

3 (6) The effects of interactions with marine mammals and birds.

4 (7) The cumulative effects of a number of similar finfish aquaculture projects on
5 the ability of the marine environment to support ecologically significant flora and
6 fauna.

7 (8) The effects of feed, fish meal, and fish oil on marine ecosystems.

8 (9) The effects of escaped fish on wild fish stocks and the marine environment.

9 (10) The design of facilities and farming practices so as to avoid adverse
10 environmental impacts, and to minimize any unavoidable impacts.

11 **Comment.** Section 15560 continues former Fish and Game Code Section 15008 without
12 change.

13 **§ 15565. Department aquaculture coordinator**

14 15565. There is within the department an aquaculture coordinator who shall
15 perform all of the following duties as part of the department's aquaculture
16 program:

17 (a) Promote understanding of aquaculture among public agencies and the
18 general public.

19 (b) Propose methods of reducing the negative impact of public regulation at all
20 levels of government on the aquaculture industry.

21 (c) Provide information on all aspects of regulatory compliance to the various
22 sectors of the aquaculture industry.

23 (d) Provide advice to the owner of a registered aquaculture facility on project
24 siting and facility design, as necessary, to comply with regulatory requirements.

25 (e) Coordinate with the Aquaculture Development Committee regarding the
26 duties described in subdivisions (a) to (d), inclusive.

27 **Comment.** Section 15565 continues former Fish and Game Code Section 15100 without
28 change.

29 **Article 2. Fees and Costs**

30 **§ 15600. Costs for requested inspections**

31 15600. Aquaculturists operating under this title shall pay all costs incurred by
32 the department when conducting any inspections of plants, animals, facilities, or
33 culture areas required by this title, or by regulations adopted pursuant to this title,
34 when requested by the aquaculturists.

35 **Comment.** Section 15600 continues former Fish and Game Code Section 15004(c) without
36 substantive change.

1 § 15605. Evaluation of fees by department

2 15605. (a) At least once every five years, the department shall analyze the fees
3 and taxes authorized by this title to ensure that the amount of the appropriate fee
4 or tax is sufficient to fully fund the aquaculture program.

5 (b) The department shall, as appropriate, recommend fee or tax changes to the
6 Legislature or the commission.

7 **Comment.** Section 15605 continues former Fish and Game Code Section 15004(a) and (b)
8 without substantive change.

9 CHAPTER 3. REGISTRATION

10 Article 1. General Provisions

11 § 15650. Registration requirement

12 15650. It is unlawful to conduct aquaculture operations or to culture approved
13 species of aquatic plants and animals unless registered under this article.

14 **Comment.** Section 15650 continues the third sentence of former Fish and Game Code Section
15 15101(b) without substantive change.

16 **Staff Note.** The Fish and Game Code presently contains two versions of Fish and Game
17 Code Section 15101, the first operative until January 1, 2018, the second operative thereafter. See
18 2012 Cal. Stat. ch. 301, § 2, 3. However, the provision that would be continued by proposed
19 Section 15650 appears and reads the same in both versions.

20 § 15655. Required information

21 15655. (a) The owner of each aquaculture facility shall register all of the
22 following information with the department by March 1 of each year:

23 (1) The owner's name.

24 (2) The species grown.

25 (3) The location or locations of each operation or operations.

26 (b) The department may provide registration forms for this purpose.

27 (c) The annual registration of information required by subdivision (a) is not a
28 project for purposes of the California Environmental Quality Act (Division 13
29 (commencing with Section 21000) of the Public Resources Code).

30 **Comment.** Subdivision (a) of Section 15655 continues former Fish and Game Code Section
31 15101(a) without substantive change.

32 Subdivision (b) continues the first part of the first sentence of former Fish and Game Code
33 Section 15101(b) without substantive change.

34 Subdivision (c) continues former Fish and Game Code Section 15101(c) without substantive
35 change.

36 **Staff Note.** The Fish and Game Code presently contains two versions of Fish and Game
37 Code Section 15101, the first operative until January 1, 2018, the second operative thereafter. See
38 2012 Cal. Stat. ch. 301, § 2, 3. However, the provisions that would be continued by proposed
39 Section 15655 appears and reads the same in both versions.

1 **§ 15660. Department review of registration**

2 15660. The department may establish a procedure for the review of the
3 information provided pursuant to Section 15655, to ensure that the operation will
4 not be detrimental to native wildlife,

5 **Comment.** Section 15660 continues the second part of the first sentence of former Fish and
6 Game Code Section 15101(b) without substantive change.

7 **Staff Note.** The Fish and Game Code presently contains two versions of Fish and Game
8 Code Section 15101, the first operative until January 1, 2018, the second operative thereafter. See
9 2012 Cal. Stat. ch. 301, § 2, 3. However, the provision that would be continued by proposed
10 Section 15660 appears and reads the same in both versions.

11 **Article 2. Fees**

12 **§ 15700. Registration fee**

13 15700. (a) The department shall impose a registration fee to recover the cost of
14 reviewing new registrations, and for renewing registrations.

15 (b) Until January 1, 2018, the registration and renewal fees shall be assessed as
16 follows:

17 (1) The registration fee shall be eight hundred dollars (\$800).

18 (2) The registration renewal fee shall be five hundred dollars (\$500).

19 (3) The fees specified in this subdivision are applicable to the 2013 registration
20 year, and shall be adjusted annually thereafter pursuant to Section 2780.

21 (c) On or after January 1, 2018, the registration and renewal fees shall be
22 assessed as follows:

23 (1) The registration fee shall be five hundred forty-nine dollars (\$549).

24 (2) The registration renewal fee shall be two hundred seventy-five dollars
25 (\$275).

26 (3) The fees specified in this subdivision are applicable to the 2004 registration
27 year, and shall be adjusted annually thereafter pursuant to Section 2780.

28 **Comment.** Section 15700 combines and restates a part of the first sentence, the second
29 sentence, and the fourth sentence of former Fish and Game Code Section 15101(b), as added by
30 2012 Cal. Stat. ch. 301, § 2, and of former Fish and Game Code Section 15101(b), as added by
31 2012 Cal. Stat. ch. 301, § 3, without substantive change.

32 **Staff Note.** The Fish and Game Code presently contains two versions of Fish and Game
33 Code Section 15101, the first operative until January 1, 2018, the second operative thereafter. See
34 2012 Cal. Stat. ch. 301, § 2, 3. The two versions substantively differ with regard to the amount
35 and determination of registration fees.

36 **As the operative date of the proposed law is uncertain, proposed Section 15700 would
37 combine the provisions of the two versions of existing Section 15101 relating to fees.**

38 **§ 15705. Surcharge fee based on gross annual sales**

39 15705. (a) In addition to the fees specified in Section 15700, a surcharge fee
40 shall be paid at the time of renewal of registration by the owner of an aquaculture

1 facility, if the gross annual sales of aquaculture products of the facility during the
2 prior calendar year exceed twenty-five thousand dollars (\$25,000).

3 (b) Each owner of a registered aquaculture facility shall maintain sales and
4 production records which shall be made available upon request of the department
5 to assist the department in the administration of this chapter.

6 (c) Until January 1, 2018, the surcharge fee shall be assessed as follows:

7 (1) The fee shall be six hundred dollars (\$600).

8 (2) The fee specified in this subdivision is applicable to the 2013 registration
9 year, and shall be adjusted annually thereafter pursuant to Section 2780.

10 (d) On or after January 1, 2018, the surcharge fee shall be assessed as follows:

11 (1) The fee shall be four hundred twelve dollars (\$412).

12 (2) The fee specified in this subdivision is applicable to the 2004 registration
13 year, and shall be adjusted annually thereafter pursuant to Section 2780.

14 (d) Any person who fails to pay the surcharge fee required in this section at the
15 time of registration shall be assessed a delinquency penalty pursuant to Section
16 15710.

17 **Comment.** Section 15705 combines and continues former Fish and Game Code Section
18 15103(a)-(d), as added by 2012 Cal. Stat. ch. 301, § 4, and former Fish and Game Code Section
19 15103(a)-(d), as added by 2012 Cal. Stat. ch. 301, § 5, without substantive change.

20 **Staff Notes.** (1) The Fish and Game Code presently contains two versions of Fish and
21 Game Code Section 15103, the first operative until January 1, 2018, the second operative
22 thereafter. See 2012 Cal. Stat. ch. 301, § 4, 5. The substantive language of the two versions
23 differs only with regard to the amount and determination of surcharge fees.

24 **As the operative date of the proposed law is uncertain, proposed Section 15705 would**
25 **combine the two versions of existing Section 15101.**

26 (2) Existing Section 15103(a) provides that the surcharge fee specified by the section shall be
27 paid “at the time of registration.” However, as the imposition of the fee is triggered by a specified
28 amount of annual sales during the prior calendar year, it would appear a surcharge fee could
29 never be required at the time of an initial registration of an aquaculture facility, but only upon a
30 renewal of a registration. Proposed Section 15705(a) therefore specifies that a surcharge fee shall
31 be paid at the time of renewal or registration.

32 **The staff invites comment on whether this revision is problematic.**

33 **§ 15710. Penalty for delinquent fee payment**

34 15710. (a) The registration fee required by Section 15700 is delinquent if not
35 paid within one calendar month of the commencement of business. The fee for
36 renewal of registration, and the surcharge fee required by Section 15705, are
37 delinquent if not paid on or before April 1 of the registration year.

38 (b) A penalty shall be imposed for any delinquent fee, which shall be paid at the
39 time of registration or renewal.

40 (c) Until January 1, 2018, the penalty shall be assessed as follows:

41 (1) The amount of the penalty shall be one hundred fifty dollars (\$150).

42 (2) The penalty shall be applicable to the 2013 registration year, and shall be
43 adjusted annually thereafter pursuant to Section 2780.

44 (d) On or after January 1, 2018, the penalty shall be assessed as follows:

1 (1) The amount of the penalty shall be fifty dollars (\$150).

2 (2) The penalty imposed shall be applicable to the 2005 registration year, and
3 shall be adjusted annually thereafter pursuant to Section 2780.

4 **Comment.** Section 15710 combines and restates former Fish and Game Code Section 15104,
5 as added by 2012 Cal. Stat. ch. 301, § 6, and former Fish and Game Code Section 15104, as
6 added by 2012 Cal. Stat. ch. 301, § 7, without substantive change.

7 **Staff Notes.** (1) The Fish and Game Code presently contains two versions of Fish and
8 Game Code Section 15104, the first operative until January 1, 2018, the second operative
9 thereafter. See 2012 Cal. Stat. ch. 301, § 6, 7. The substantive language of the two versions
10 differs only with regard to the amount and determination of penalty fees.

11 **As the operative date of the proposed law is uncertain at this time, proposed Section**
12 **15710 would combine the two versions of existing Section 15104.**

13 (2) Existing Section 15104(a) (of both versions of the provision), which specifies when an
14 aquaculture fee is delinquent and triggers imposition of a penalty, is confusingly drafted. The
15 subdivision reads as follows:

16 “If any person engages in the business of aquaculture, as regulated under this division, without
17 having paid the registration fee or surcharge fee within one calendar month of the commencement
18 of business, or, for renewal of registration, on or before April 1 of the registration year, the fees
19 are delinquent.”

20 The staff’s concern is the indication of when the specified “surcharge fee” is due. This fee,
21 which is provided for in existing Section 15103, is determined based on an aquaculture
22 operation’s gross annual sales during the prior year. It would therefore appear to be impossible
23 for any owner to be able to know to pay this fee within one calendar month of the commencement
24 of business. The staff suspects the intended due date for the surcharge fee was intended to be the
25 same as the due date for the registration renewal fee, rather than the due date for an initial
26 registration fee, and proposed Section 15710 would make that revision.

27 **The staff invites comment on whether proposed Section 15710 correctly states the**
28 **intended meaning of existing Section 15104.**

29 **§ 15715. Expenditure of collected funds**

30 15715. (a) Notwithstanding **Section 13001 or 13002**, all moneys collected by
31 the department pursuant to this title shall be deposited in the Fish and Game
32 Preservation Fund, and shall be expended solely on the department’s aquaculture
33 program pursuant to this title.

34 (b) Notwithstanding **Section 13220**, these moneys are available for
35 appropriation by the Legislature in the annual Budget Act for purposes of this title.

36 (c) The department shall maintain internal accountability necessary to ensure
37 that all restrictions on the expenditure of these funds are met, and shall provide an
38 accounting of the aquaculture program account balance and expenditures upon
39 request of the Aquaculture Development Committee, or the Joint Committee on
40 Fisheries and Aquaculture.

41 (d) Revenues pursuant to this article may be used only to pay the costs incurred
42 in the administration and enforcement of the department’s aquaculture program.

43 (e) The department shall prepare and submit to the Legislature, on or before
44 February 1, 2017, a report regarding the aquaculture program undertaken using
45 revenues derived pursuant to that program, the benefits derived, and its

1 recommendations for revising the aquaculture program requirement, if any. The
2 report shall be submitted in compliance with Section 9795 of the Government
3 Code.

4 (f) The requirement for submitting a report under subdivision (e) is inoperative
5 on February 1, 2021, pursuant to Section 10231.5 of the Government Code.

6 **Comment.** Section 15715 continues former Fish and Game Code Section 15105 without
7 substantive change. See also Gov't Code Section 10231.5 (bill imposing requirement to report to
8 Legislature generally must include provision repealing or making inoperative the reporting
9 requirement four years after date the report is required).

10 CHAPTER 4. AQUATIC ORGANISMS

11 § 15750. Regulation of placement of organisms

12 15750. (a) The commission may regulate the placing of aquatic plants and
13 animals in state waters.

14 (b) The commission may prohibit the placement of specific species of aquatic
15 plants or animals in designated state waters. The prohibition may not include
16 species that are found to be native, or that are stocked by the state in a location
17 where prohibition is contemplated.

18 **Comment.** Subdivision (a) of Section 15750 continues the first sentence of former Fish and
19 Game Code Section 15200 without substantive change.

20 Subdivision (b) continues former Fish and Game Code Section 15202 without substantive
21 change.

22 § 15755. Operation detrimental to adjacent wildlife

23 15755. The department may prohibit an aquaculture operation or the culturing of
24 any species at any location where it is determined it would be detrimental to
25 adjacent native wildlife.

26 **Comment.** Section 15755 continues former Fish and Game Code Section 15102 without
27 change.

28 § 15760. Permit required to place organisms

29 15760. (a) A permit is required to place fish on public or private land or water in
30 any watershed above an established public or private fish hatchery.

31 (b) The department shall deny the permit if there is evidence that water quality
32 or potential disease transfer will be adverse to the established hatchery.

33 **Comment.** Section 15760 continues former Fish and Game Code Section 15201 without
34 substantive change.

35 § 15765. Movement of fish between registered aquaculturists

36 15765. Movement of live fish between two registered aquaculturists who are
37 registered for those species does not require a permit.

38 **Comment.** Section 15765 continues the second sentence of former Fish and Game Code
39 Section 15200 without change.

1 § 15770. Fee for use of public land and waters

2 15770. (a) The department may assess a fee on persons growing aquaculture
3 products on public lands and in public waters based on the price per pound of the
4 products sold. The fees, if imposed, shall be set at amounts necessary to defray the
5 costs of the commission and the department in administering this title. However,
6 the fees if any, may not exceed the tax rates as provided in Section 14255.

7 (b) The price per pound for these taxation purposes shall be based on the whole
8 product weight or its equivalent as taken by the lessee.

9 (c) The privilege tax imposed by this section shall be paid monthly to the
10 department within 30 days after the close of each month. If not paid within 60
11 days after the close of the month in which it is due, a 10 percent penalty shall be
12 paid.

13 **Comment.** Section 15770 continues former Fish and Game Code Section 15003 without
14 substantive change.

15 **Staff Note.** Existing Fish and Game Code Section 15003, which authorizes the Department to
16 require monetary payment from aquaculturists, references that payment as a “fee” in subdivision
17 (a), and a “tax” in subdivision (c). The section also refers to the payment as having a “taxation
18 purpose” in subdivision (b).

19 As a “fee” in some cases may have a different substantive meaning than a “tax,” the staff
20 believes this terminology should be standardized. However, it is not clear which term should be
21 used consistently throughout the section.

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

23 CHAPTER 5. ACQUISITION OF ORGANISMS

24 § 15850. Sources for brood stock

25 15850. Aquatic plants or animals may be legally obtained for use as brood stock
26 from any of the following sources:

27 (a) A holder of a commercial fishing license.

28 (b) A registered aquaculturist.

29 (c) The department.

30 (d) Imported sources authorized by Chapter 8 (commencing with Section
31 16300).

32 **Comment.** Section 15850 continues former Fish and Game Code Section 15300 without
33 substantive change.

34 **Staff Note.** As indicated in other Staff Notes, the proposed law would generally replace
35 statutory references to persons licensed to engage in specified commercial fishing activity with
36 references to persons required to obtain the specified license. The expressed rationale for this
37 substitution is the belief that the Legislature likely did not intend persons engaging in commercial
38 fishing activity to escape regulation by letting their license lapse, or never obtaining one at all.

39 However, on rare occasion a reference to a “licensed” commercial actor may have been
40 affirmatively intended, in order that the referenced license be understood as a required element of
41 a provision. Existing Fish and Game Code Section 15300 (which would be continued by
42 proposed Section 15850) may be such an instance. The provision indicates that one of four
43 sources from which an aquaculturist may legally obtain brood stock is “a holder of a commercial
44 fishing license.”

1 Although the staff cannot be certain, the use of this language (as contrasted with the customary
2 and far more frequently used reference to a “commercial fisherman”) suggests the possibility that
3 the Legislature wished to restrict the persons providing brood stock to aquaculturists to persons
4 whose credentials to engage in commercial fishing activity have been in some way verified by the
5 Department. (A second specified source for the brood stock is a “registered” aquaculturist.)

6 **The staff invites comment on whether it was the Legislature’s intent to allow**
7 **aquaculturists to obtain brood stock from any commercial fisher, or only those who have a**
8 **valid commercial fishing license.**

9 **§ 15855. Collection of organisms by registered aquaculturist**

10 15855. Aquatic plants and animals may be collected by a registered
11 aquaculturist only with the written approval of the department. The department
12 may specify the time, place, and manner of collection, and may collect a fee from
13 the aquaculturist in an amount sufficient to cover the cost of processing the
14 approval.

15 (b) Notwithstanding subdivision (a), the fee for collecting sturgeon or striped
16 bass broodstock shall be five hundred dollars (\$500).

17 **Comment.** Subdivision (a) of Section 15855 continues former Fish and Game Code Section
18 15301(b) without change.

19 Subdivision (b) continues former Fish and Game Code Section 15301(c) without change.

20 **§ 15860. Sale of organisms by department**

21 15860. (a) The department may sell wild aquatic plants or animals, except rare,
22 endangered, or fully protected species, for aquaculture use, at a price
23 approximating the administrative cost to the department for the collection or sale
24 of the plants or animals. The commission shall set this price.

25 **Comment.** Section 15860 continues former Fish and Game Code Section 15301(a) without
26 change.

27 **§ 15865. Ownership of progeny**

28 15865. The cultured progeny of wild plants and animals lawfully obtained under
29 Section 15850 are the exclusive property of that person who cultured them, or that
30 person’s successor in interest.

31 **Comment.** Section 15865 continues former Fish and Game Code Section 15001 without
32 substantive change.

33 **CHAPTER 6. LEASING OF STATE WATER BOTTOMS**

34 **Article 1. General Provisions**

35 **§ 15900. Authority and procedure**

36 15900. (a) Except as prohibited by Section 16450, 16455, 16460, or 16465, the
37 commission may lease state water bottoms, or the water column, to any person for
38 aquaculture, including, but not limited to, marine finfish aquaculture.

1 (b) Upon appropriation of funds for that purpose, or if funds are otherwise
2 available, the commission shall adopt regulations governing the terms of the
3 leases, after consulting with affected stakeholders in a public process.

4 (c) No state leases shall be issued, unless the commission determines that the
5 lease is in the public interest in a public hearing conducted in a fair and transparent
6 manner, with notice and comment, in accordance with commission procedures.

7 (d) Leases issued, and regulations adopted, pursuant to this section, shall not be
8 construed to be fishery management plans.

9 **Comment.** Section 15900 continues former Fish and Game Code Section 15400(a) without
10 substantive change.

11 **§ 15905. Lease required for marine finfish aquaculture**

12 15905. A person shall not engage in marine finfish aquaculture in ocean waters
13 within the jurisdiction of the state without a lease from the commission pursuant to
14 Section 15900.

15 **Comment.** Section 15905 continues the first sentence of former Fish and Game Code Section
16 15400(b) without change.

17 **§ 15910. Standards for leases and regulation**

18 15910. Leases and regulations adopted by the commission for marine finfish
19 aquaculture shall meet, but are not limited to, all of the following standards:

20 (a) The lease site is considered appropriate for marine finfish aquaculture in the
21 programmatic environmental impact report if prepared and approved by the
22 commission pursuant to Section 15560.

23 (b) A lease shall not unreasonably interfere with fishing or other uses or public
24 trust values, unreasonably disrupt wildlife and marine habitats, or unreasonably
25 harm the ability of the marine environment to support ecologically significant
26 flora and fauna.

27 (c) A lease shall not have significant adverse cumulative impacts.

28 (d) To reduce adverse effects on global ocean ecosystems, the use of fish meal
29 and fish oil shall be minimized. Where feasible, alternatives to fish meal and fish
30 oil, or fish meal and fish oil made from seafood harvesting byproducts, shall be
31 utilized, taking into account factors that include, but need not be limited to, the
32 nutritional needs of the fish being raised and the availability of alternative
33 ingredients.

34 (e) Lessees shall establish best management practices, approved by the
35 commission, for each lease site. Approved best management practices shall
36 include a regular monitoring, reporting, and site inspection program that requires
37 at least annual monitoring of lease sites to ensure that the operations are in
38 compliance with best management practices related to fish disease, escapement,
39 and environmental stewardship, and that operations are meeting the requirements
40 of this section.

1 (f) The commission may remove fish stocks, close facilities, or terminate the
2 lease if it finds that the lessee is not in compliance with best management
3 practices, that the lessee's activities have damaged or are damaging the marine
4 environment, or that the lessee is not in compliance with this section. The
5 commission shall take immediate remedial action to avoid or eliminate significant
6 damage, or the threat of significant damage, to the marine environment.

7 (g) Before issuance of the lease, the lessee shall provide baseline benthic habitat
8 and community assessments of the proposed lease site to the applicable regional
9 water quality control board or the State Water Resources Control Board, and shall
10 monitor the benthic habitat and community during the operation of the lease in a
11 manner determined by the regional board or the State Water Resources Control
12 Board.

13 (h) The regional board and the State Water Resources Control Board may
14 establish and impose reasonable permit fees to pay for the costs of administering
15 and conducting the assessment and monitoring program.

16 (i) Finfish numbers and density shall be limited to what can be safely raised
17 while protecting the marine environment, as specified by the terms of the lease,
18 subject to review and amendment by the commission.

19 (j) The use of all drugs, chemicals, and antibiotics, and amounts used and
20 applied, shall be minimized. All drugs, therapeutic substances, and antibiotics
21 shall be used and applied only as approved by the United States Food and Drug
22 Administration for marine finfish aquaculture. The lessee shall report that use and
23 application to the commission on a regular schedule, as determined by the
24 commission, but no less than annually, that shall be included in the terms of the
25 lease. The commission shall review those reports on a regular basis and at least
26 annually.

27 (k) The commission shall require all farmed fish to be marked, tagged, or
28 otherwise identified as belonging to the lessee in a manner determined appropriate
29 by the commission, unless the commission determines that identifying farmed fish
30 is unnecessary for protecting wild fish stocks, the marine environment, or other
31 ocean uses.

32 (l) All facilities and operations shall be designed to prevent the escape of farmed
33 fish into the marine environment and to withstand severe weather conditions and
34 marine accidents. The lessee shall maintain records on all escapes in a manner
35 determined by the commission. In the event of more than de minimis escapement,
36 the number of escaped fish and the circumstances surrounding the incident shall be
37 reported immediately to the commission, and the lessee shall be responsible for
38 damages to the marine environment caused by those escaped fish, as determined
39 by the commission.

40 (m) The lessee shall, at a minimum, meet all applicable requirements imposed
41 by the State Water Resources Control Board and the regional water quality control
42 boards, and shall prevent discharges to the maximum extent possible. Monitoring
43 and testing of water quality shall be required on a regular basis as deemed

1 appropriate by the State Water Resources Control Board or the regional water
2 quality control boards. All inspection and monitoring reports and other records,
3 and all data on the discharge of chemical and biological pollutants shall be kept on
4 file and available for public review.

5 **Comment.** Section 15910 continues the second sentence of former Fish and Game Code
6 Section 15400(b), and Section 15400(b)(1)-(10), without substantive change.

7 **§ 15915. Exemption from standards for specified restoration or enhancement plans**

8 15915. If a restoration or enhancement plan is submitted to, and approved by,
9 the commission, and that plan, among other things, provides for monitoring and
10 protecting the benthic habitat, the prevention of pollution, and the prevention of
11 adverse impacts on wild fish stocks from disease, parasites, and genetic
12 alterations, Section 15910 shall not apply to any of the following:

13 (a) Artificial propagation, rearing, and stocking projects for the purpose of
14 recovery, restoration, or enhancement of native fish stocks carried out under either
15 of the following:

16 (1) A scientific collecting or research permit issued by the department.

17 (2) The California Ocean Resources Enhancement and Hatchery Program, as set
18 forth in **Article 8 (commencing with Section 6590) of Chapter 5 of Part 1 of**
19 **Division 6**, for the enhancement of white sea bass.

20 (b) Nonprofit hatcheries and nonprofit artificial propagation projects operated
21 by, or on behalf of, licensed commercial or sport fishers for the purpose of
22 recovery, restoration, or enhancement of California's native marine fish
23 populations, pursuant to **Chapter 8 (commencing with Section 6900) of Part 1**
24 **of Division 6**.

25 **Comment.** Section 15915 continues former Fish and Game Code Section 15400(c) without
26 substantive change.

27 **§ 15920. Disclaimer of application to other marine finfish aquaculture law or regulation**

28 15920. Nothing in this article shall be construed to limit or expand the
29 application of any other state law or regulation pertaining to marine finfish
30 aquaculture conducted within the ocean waters under the jurisdiction of this state.

31 **Comment.** Section 15920 continues former Fish and Game Code Section 15400(d) without
32 substantive change.

33 **Article 2. Lease Procedure**

34 **§ 15950. Application for lease**

35 15950. (a) A person wishing to lease a state water bottom shall make a written
36 application to the commission.

37 (b) The application shall contain all of the following information:

38 (1) A map showing the area to be leased, its general vicinity, and all ownership
39 and boundary lines in the vicinity.

1 (2) A description of the organisms to be grown and the culture techniques to be
2 used.

3 (3) An estimate of the acreage to be leased.

4 (4) A nonrefundable filing fee of five hundred dollars (\$500).

5 (c) Areas used by the public for digging clams shall not be leased. The
6 department shall designate those areas.

7 **Comment.** Subdivision (a) of Section 15950 continues the first sentence of former Fish and
8 Game Code Section 15403 without substantive change.

9 Subdivision (b) continues the second sentence and subdivisions (a)-(d) of former Fish and
10 Game Code Section 15403, without substantive change.

11 Subdivision (c) continues former Fish and Game Code Section 15401 without change.

12 **§ 15955. Public notice of application**

13 15955. (a) If the commission finds that a state water bottom applied for is
14 available for lease, and that the lease would be in the public interest, the
15 commission shall publish a notice that the area is being considered for leasing.

16 (b) The commission shall also publish legal notices in a newspaper of general
17 circulation in each county where the water bottom or any part of the water bottom
18 is located, describing the area to be leased and the type of operation to be
19 conducted.

20 (c) The publication shall comply with Sections 6060 and 6066 of the
21 Government Code.

22 **Comment.** Section 15955 continues former Fish and Game Code Section 15404 without
23 substantive change.

24 **§ 15960. Notification to State Lands Commission**

25 15960. (a) The department shall notify the State Lands Commission of all
26 applications for water bottom leases.

27 (b) The department shall inform the State Lands Commission of all leases
28 executed, renewed, or assigned pursuant to this chapter, and shall furnish the State
29 Lands Commission with information concerning those leases that the State Lands
30 Commission may require.

31 **Comment.** Section 15960 continues former Fish and Game Code Section 15415 without
32 substantive change.

33 **§ 15965. Lease to new bidders**

34 15965. (a) Except as specified in subdivision (b), the commission shall award
35 state water bottom leases to the highest responsible bidder, if the bid meets or
36 exceeds the minimum annual rent established by the commission, which shall not
37 be less than two dollars (\$2) per acre, for all species cultivated, unless the acreage
38 applied for is 10 acres or less, in which case the minimum acceptable rent shall be
39 ten dollars (\$10) per acre.

40 (b) The commission may reject any or all bids for the lease of state water
41 bottoms if it deems the rejection to be in the public interest.

1 (c) Fees for marine finfish aquaculture leases shall, at a minimum, be sufficient
2 to pay for the costs of administering the marine finfish leasing program, and for
3 monitoring and enforcing the terms of the leases.

4 **Comment.** Subdivision (a) of Section 15965 continues the first sentence of former Fish and
5 Game Code Section 15406.5(a) without substantive change.

6 Subdivision (b) continues the third sentence of former Fish and Game Code Section 15406.5(a)
7 without change.

8 Subdivision (c) continues former Fish and Game Code Section 15406.5(b) without substantive
9 change.

10 Article 3. Terms of Lease

11 § 16000. Term of lease

12 16000. (a) Except as specified in subdivision (b), no initial term of a state water
13 bottom lease shall exceed 25 years.

14 (b) The initial term of a state water bottom lease for marine finfish aquaculture
15 shall not exceed 10 years.

16 **Comment.** Section 16000 continues former Fish and Game Code Section 15405 without
17 change.

18 § 16005. Rent increases by Legislature

19 16005. All state water bottom leases shall be subject to the power of the
20 Legislature to increase or decrease the rents, fees, taxes, and other charges relating
21 to the lease, but no increase in rent shall be applicable to an existing lease until it
22 is renewed.

23 **Comment.** Section 16005 continues former Fish and Game Code Section 15410 without
24 substantive change.

25 § 16010. Renewal of lease

26 16010. (a) Each state water bottom lease shall specify a period prior to
27 expiration when renewal of the lease may be requested by the lessee. If during that
28 period the lessee is still actively engaged in aquaculture, as determined by the
29 commission, the lessee shall have a prior right to renew the lease on terms agreed
30 upon between the commission and the lessee. If terms are not agreed upon, the
31 commission shall advertise for bids on the lease. If a request for renewal is not
32 made by the lessee, the commission shall advertise for bids on the lease. The
33 commission shall consider bids only from aquaculturists registered pursuant to
34 Section 15650.

35 (b) Notwithstanding subdivision (a), with respect to any lease of state water
36 bottoms in effect on January 1, 1983, the lessee shall have a prior right to renew
37 the lease. If the lessee does not renew the lease, the commission shall advertise for
38 bids on the lease. The commission shall consider bids only from aquaculturists
39 registered pursuant to Section 15650.

1 (c) Except as specified in subdivision (d), a lease may be renewed for additional
2 periods not to exceed 25 years each.

3 (d) A lease for marine finfish aquaculture may be renewed for additional periods
4 not to exceed five years each.

5 **Comment.** Section 16010 continues former Fish and Game Code Section 15406 without
6 substantive change.

7 **§ 16015. Periodic reports to commission**

8 16015. A water bottom lease may require periodic reports that the commission
9 deems necessary for the proper administration of the state's water bottoms.

10 **Comment.** Section 16015 continues former Fish and Game Code Section 15414 without
11 change.

12 **§ 16020. Oyster leases**

13 16020. (a) The annual rent for any lease in effect on January 1, 1983, for the
14 cultivation of oysters, shall be one dollar (\$1) per acre, until the expiration of the
15 lease.

16 (b) In addition to the rent specified in subdivision (a), every person operating
17 under an oyster lease shall pay a privilege tax of four cents (\$0.04) per packed
18 gallon, or fraction of a gallon, of shucked oysters harvested by the lessee.

19 (c) If the oysters are marketed in the shell, the tax shall be based on the
20 equivalent yield of shucked oyster meat. In determining the yield of oysters, it
21 shall be deemed that 100 oysters are equivalent to one packed gallon of shucked
22 oyster meat.

23 (d) The tax imposed by this section is the exclusive privilege tax that shall be
24 imposed on lessees of state water bottoms for oyster cultivation, notwithstanding
25 subdivision (a) of Section 15770.

26 **Comment.** Subdivision (a) of Section 16020 continues the second sentence of former Fish and
27 Game Code Section 15406.5(a) without substantive change.

28 Subdivisions (b) through (d) continue former Fish and Game Code Section 15406.7 without
29 substantive change.

30 **Article 4. Rights and Responsibilities of Lessee**

31 **§ 16050. Payment of rent**

32 16050. (a) The annual rent for a state water bottom lease shall be paid to the
33 department within 30 days of the commencement of the lease and within 30 days
34 of each anniversary of the commencement of the lease.

35 (b) The commission may establish penalty fees for late payment of rent due
36 under a state water bottom lease.

37 (c) The commission may cancel a state water bottom lease if rent is not paid
38 within 90 days of the commencement of the lease and within 90 days of each
39 anniversary of the commencement of the lease.

1 **Comment.** Section 16050 continues former Fish and Game Code Section 15407 without
2 substantive change.

3 **§ 16055. Lessee responsibility for infringement**

4 16055. A lessee of a state water bottom shall assume responsibility for any
5 infringement on privately owned water bottoms, or water bottoms owned by, or
6 under the jurisdiction of any city, county, or district.

7 **Comment.** Section 16055 continues the last paragraph of former Fish and Game Code Section
8 15403 without change.

9 **§ 16060. Lessee rights to organisms**

10 16060. A lessee of a state water bottom owns all lawfully cultivated organisms
11 that are described in the application for the lease and produced in the area leased.
12 The lessee has the exclusive right to cultivate and harvest the aquatic organisms in
13 the area leased.

14 **Comment.** Section 16060 continues former Fish and Game Code Section 15402 without
15 change.

16 **§ 16065. Accommodation of public activity in leased area**

17 16065. (a) Lessees under a state water bottom lease may not unreasonably
18 impede public access to state waters for purpose of fishing, navigation, commerce,
19 or recreation.

20 (b) Notwithstanding subdivision (a), a lessee of a state water bottom may limit
21 public access to the extent necessary to avoid damage to the leasehold, or to the
22 aquatic life culture in the leasehold.

23 (c) The commission may prohibit any recreational activity in any aquaculture
24 area subject to a state water bottom lease, if it determines that the activity is
25 detrimental to the enhancement of the resource.

26 **Comment.** Section 16065 continues former Fish and Game Code Section 15411 without
27 substantive change.

28 **§ 16070. Termination of lease**

29 16070. (a) The commission shall adopt regulations governing the termination of
30 a state water bottom lease due to failure to pay rent, or improper use of the
31 leasehold.

32 (b) Upon termination of a state water bottom lease for any reason, all structures
33 shall be removed at the lessee's expense from the leasehold, and the area shall be
34 restored to its original condition. If the lessee fails to remove the structures, the
35 state may remove them and the lessee shall pay the removal costs incurred.

36 (c) The commission shall require financial assurances of each marine finfish
37 aquaculture lessee to ensure that restoration is performed to the satisfaction of the
38 commission. Financial assurances may take the form of surety bonds executed by
39 an admitted surety insurer, irrevocable letters of credit, trust funds, or other forms

1 of financial assurances specified by the commission, as it determines are available
2 and adequate to ensure the lease site is restored pursuant to this section.

3 (d) Marine finfish aquaculture lessees shall be responsible for any damages
4 caused by their operations, as determined by the commission, including, but not
5 limited to, reimbursement for any costs for natural resource damage assessment.

6 (e) Nothing in this section limits the state in pursuing additional remedies
7 authorized by law.

8 **Comment.** Subdivision (a) of Section 16070 continues former Fish and Game Code Section
9 15408 without substantive change.

10 Subdivisions (b) through (e) continue former Fish and Game Code Section 15409 without
11 substantive change.

12 **§ 16075. Assignment of lease**

13 16075. No water bottom lease may be assigned without the prior approval of the
14 commission. Application for approval of a lease assignment shall comply with all
15 of the requirements for an original lease.

16 **Comment.** Section 16075 continues former Fish and Game Code Section 15412 without
17 change.

18 **Article 5. Prohibitions**

19 **§ 16100. Protection of leased area**

20 16100. (a) No person may enter an area subject to a state water bottom lease in
21 which aquatic life is cultivated, or remove aquatic life from that area, without the
22 consent of the lessee, or willfully destroy the cultivated aquatic life or any markers
23 intended to designate the boundaries and limits of the leased area.

24 **Comment.** Section 16100 continues former Fish and Game Code Section 15413 without
25 substantive change.

26 **CHAPTER 7. DISEASE CONTROL**

27 **Article 1. Administration**

28 **§ 16150. Responsibilities for disease control**

29 16150. (a) Upon the recommendation of the department and after consultation
30 with the Aquaculture Disease Committee created pursuant to this chapter, the
31 commission shall compile a list of diseases and parasites, and the aquatic plants
32 and animals they are known to infect or parasitize.

33 (b) All government activities relating to aquaculture disease detection, control,
34 and eradication that do not affect human health and safety are the responsibility of
35 the department.

36 **Comment.** Section 16150 continues former Fish and Game Code Section 15500 without
37 substantive change.

1 **§ 16155. Inspection of areas by department**

2 16155. The department may enter, under an inspection warrant issued pursuant
3 to Title 5 (commencing with Section 1822.50) of Part 3 of the Code of Civil
4 Procedure, at any time, any car, warehouse, depot, ship, or growing area where
5 any aquatic plants or animals are held or stored, for the purpose of making an
6 examination to ascertain whether the aquatic plants or animals are infected,
7 diseased, or parasitized.

8 **Comment.** Section 16155 continues former Fish and Game Code Section 15501 without
9 change.

10 **§ 16160. Aquaculture Disease Committee**

11 16160. (a) The director, in consultation with the Aquaculture Industry Advisory
12 Committee and the Interagency Committee for Aquaculture Development, shall
13 appoint an 11-member Aquaculture Disease Committee consisting of at least six
14 industry producers selected to represent geographic, specie, and other diverse
15 aspects of the industry; two to represent the department; one to represent the
16 Department of Food and Agriculture; an academic scientist who is an expert in
17 aquatic diseases; and one representative of the University of California
18 Cooperative Extension.

19 (b) Members of the committee shall serve without compensation, but shall be
20 paid their necessary expenses.

21 **Comment.** Section 16160 continues former Fish and Game Code Section 15502 without
22 substantive change.

23 **§ 16165. Recommendation of regulations**

24 16165. (a) The Aquaculture Disease Committee may recommend regulations to
25 the commission designed to safeguard wild and cultured organisms from the list of
26 harmful organisms compiled pursuant to Section 16150.

27 (b) Regulations recommended by the committee and adopted by the commission
28 may include all of the following:

29 (1) Routine monitoring procedures.

30 (2) Standardized diagnostic procedures.

31 (3) A requirement for the confirmation of the diagnosis by the state through at
32 least one other independent and qualified laboratory.

33 (4) Criteria for ordering quarantine, condemnation, or destruction.

34 (5) A stated maximum time period between diagnosis and destruction.

35 (6) Methods to be employed in animal destruction and facility cleanup.

36 (7) Procedures for determining fair and rapid compensation.

37 (8) Any other related procedures that the commission may determine are
38 necessary.

39 **Comment.** Subdivision (a) of Section 16165 continues former Fish and Game Code Section
40 15503 without substantive change.

41 Subdivision (b) continues former Fish and Game Code Section 15504 without substantive
42 change.

1 **§ 16170. Authorized action by director**

2 16170. If any disease or parasite listed pursuant to Section 16150 is found to
3 exist that the director, in consultation with the Aquaculture Disease Committee
4 and consistent with the regulations adopted under Section 16165, deems to be
5 detrimental to the aquaculture industry or to wild stocks of aquatic plants and
6 animals, the director may do any of the following:

7 (a) Establish the area to be quarantined and list the aquatic plants and animals
8 affected by it.

9 (b) Post notices describing, as nearly as possible, the boundaries of an area
10 within which specific disease or parasite infestations are found. Notices posted
11 pursuant to this subdivision shall be published once a week for four successive
12 weeks in a newspaper of general circulation in the county in which the infected
13 area is located. If there is no newspaper of general circulation in that county, then
14 the notice shall be published in a newspaper of general circulation published in an
15 adjoining county.

16 (c) Hold and impound diseased or parasitized plants and animals.

17 (d) Forbid, prevent, or restrict the movement of all plants and animals subject to
18 the disease or parasite from or into the area, or from place to place within it,
19 during the existence of the quarantine.

20 (e) Order the destruction and disposal of diseased or parasitized plants and
21 animals consistent with Section 16165.

22 **Comment.** Section 16170 continues former Fish and Game Code Section 15505 without
23 substantive change.

24 **§ 16175. Quarantine or destruction of other plants or animals infected with nonlisted**
25 **disease**

26 16175. Except for those diseases in the list compiled pursuant to Section 16150,
27 a plant or animal shall not be quarantined or destroyed, unless the director, in
28 consultation with the Aquaculture Disease Committee, finds that an outbreak of
29 aquatic disease among privately cultured plants or animals presents a threat to the
30 aquaculture industry or to fish life or plant life.

31 **Comment.** Section 16175 continues former Fish and Game Code Section 15506 without
32 substantive change.

33 **§ 16180. Coordination of action in government and private facilities**

34 16180. If the director, in consultation with the Aquaculture Disease Committee,
35 finds that a disease is present in a nearby government operated facility or in nearby
36 wild stocks, infected plants or animals in a private aquaculture facility shall not be
37 quarantined or destroyed unless similar action is taken with respect to the
38 government facility and wild stocks.

39 **Comment.** Section 16180 restates former Fish and Game Code Section 15507 without change.

1 department, the replacement value shall be determined by an appraiser appointed
2 by the director and an appraiser appointed by the owner. Appraiser’s fees shall be
3 paid by the appointing party. Disputes between these two appraisers shall be
4 submitted to arbitration under the Commercial Arbitration Rules of the American
5 Arbitration Association.

6 (b) If the department provides replacement stock to an aquaculturist whose
7 plants or animals are destroyed pursuant to subdivision (e) of Section 15505, the
8 amount to be paid to the aquaculturist pursuant to this section shall be reduced by
9 the value of the replacement stock, as determined by the department.

10 (c) The result of the arbitration or the amount settled between the owner and the
11 department, reduced by the value determined by the department of any
12 replacement stock provided under subdivision (b), may be submitted as a claim by
13 the owner to the California Victim Compensation and Government Claims Board
14 pursuant to Section 16255.

15 **Comment.** Section 16250 restates former Fish and Game Code Section 15512 without
16 substantive change.

17 **Staff Note.** The first sentence of proposed Section 16250(a) is intended to restate the first
18 sentence of existing Fish and Game Code Section 15512(a), to improve the clarity of that
19 provision, without changing its substantive meaning. The existing sentence reads as follows:

20 “15512. (a) If aquatic plants or animals are destroyed pursuant to subdivision (e) of Section
21 15505, the owner shall be promptly paid from the General Fund an amount equal to 75 percent of
22 the replacement value of the plants or animals, less the value determined by the department of
23 any replacement stock provided by the department under subdivision (b) if the claim is submitted
24 pursuant to Section 15513.”

25 **The staff invites comment on whether the first sentence of proposed Section 16250(a)**
26 **accurately continues the intended meaning of the first sentence of existing Section 15512(a).**

27 **§ 16255. Claims against the department**

28 16255. Claims against the department arising under this chapter may be
29 submitted pursuant to Section 905.2 of the Government Code.

30 **Comment.** Section 16255 continues former Fish and Game Code Section 15513 without
31 change.

32 **§ 16260. Disallowing of claim**

33 16260. No claim arising under this chapter shall be paid where the director, in
34 consultation with the Aquaculture Disease Committee, finds that the claimant’s
35 management practices were negligent or in violation of law, and that the
36 negligence or violation was the proximate cause of the disease or infection
37 prompting the order of destruction or finds that the claimant willfully violated any
38 provision of Section 16170.

39 **Comment.** Section 16260 continues former Fish and Game Code Section 15514 without
40 substantive change.

1 **§ 16265. Liability for disease eradication**

2 16265. (a) The owner of an aquaculture product who does not diligently pursue
3 the eradication of a disease from its facility when ordered to do so by the director
4 shall be responsible for paying to the director the full costs of the department for
5 all disease eradication efforts conducted by the department to eradicate the
6 disease.

7 (b) Payment of the costs under this section shall not excuse compliance with the
8 provisions of law, regulations of the commission, or orders of the director, nor be
9 a defense in any criminal or civil proceeding.

10 **Comment.** Section 16265 continues former Fish and Game Code Section 15516 without
11 substantive change.

12 CHAPTER 8. IMPORTATION OF AQUATIC PLANTS AND ANIMALS

13 **§ 16300. Application of chapter**

14 16300. (a) Nothing in this chapter prohibits the importation of Atlantic salmon
15 or the roe of Atlantic salmon, or the continued possession of Atlantic salmon or
16 the roe of Atlantic salmon that were lawfully imported or possessed in the Smith
17 River watershed on or before February 22, 1988, under a written approval of the
18 department issued pursuant to Section 16305.

19 (b) Nothing in this chapter applies to the importation or possession of dead
20 Atlantic salmon or nonviable roe of Atlantic salmon imported for human
21 consumption, if the importer has the appropriate licenses issued by the department.

22 **Comment.** Section 16300 continues former Fish and Game Code Section 15605 without
23 substantive change.

24 **§ 16305. Required approval by department**

25 16305. No live aquatic plant or animal may be imported into this state by a
26 registered aquaculturist without the prior written approval of the department,
27 pursuant to the regulations adopted by the commission.

28 **Comment.** Section 16305 continues former Fish and Game Code Section 15600(a) without
29 change.

30 **§ 16310. Prohibited importation**

31 16310. (a) Except as provided in subdivision (b), the department shall not
32 approve a person's importation of, or renew a person's permit to import, any
33 anadromous fish or roe from an anadromous fish listed in **Section 2118**, or the
34 regulations adopted under **Section 2118**, into the Smith River watershed, unless
35 that person had a permit or authorization approved before February 22, 1988.

36 (b) The department may issue or renew a permit for the importation of any
37 anadromous fish or roe from an anadromous fish specifically for research purposes
38 conducted at any university, college, governmental research agency, or other bona
39 fide scientific institution, as determined by the department, engaging in scientific


1 or public health research.

2 **Comment.** Section 16310 continues former Fish and Game Code Section 15600(b) without
3 substantive change.

4 **§ 16315. Application for importation**

5 16315. A written application for the importation of a live aquatic plant or animal
6 that is submitted in conformance with the procedural requirements established by
7 the commission is deemed to be approved if it has not been denied within 60 days.

8 **Comment.** Section 16315 restates former Fish and Game Code Section 15601 without
9 substantive change.

10  **Staff Note.** Proposed Section 16315 is intended to restate existing Fish and Game Code
11 Section 15601 to improve the clarity of that provision, without changing its substantive meaning.
12 The existing provision reads as follows:

13 “15601. A written application for the importation submitted in conformance with the
14 procedural requirements established by the commission is deemed to be approved where it has
15 not been denied within 60 days.”

16 **The staff invites comment on whether proposed Section 16315 accurately continues the**
17 **intended substantive meaning of existing Section 15601.**

18 **§ 16320. Application of California Environmental Quality Act**

19 16320. No facility constructed for the purpose of spawning, incubating, or
20 raising of anadromous fish listed in **Section 2118** in the Smith River watershed is
21 exempt from any provision of the California Environmental Quality Act.

22 **Comment.** Section 16320 continues former Fish and Game Code Section 15604 without
23 substantive change.

24 **CHAPTER 9. AQUACULTURE DEVELOPMENT COMMITTEE**

25 **§ 16350. Constitution of committee**

26 16350. (a) The director shall appoint an Aquaculture Development Committee,
27 consisting of the following persons:

28 (1) At least 12 members representing all sectors of the fresh and salt water
29 aquaculture industry.

30 (2) One member representing the department, two members from and chosen by
31 the University of California, one with expertise in aquaculture science and one
32 with expertise in outreach to the fisheries community, and one member each from
33 and chosen by the Department of Food and Agriculture, the California Coastal
34 Commission, the State Lands Commission, the State Water Resources Control
35 Board, the State Department of Health Services, and the Joint Legislative
36 Committee on Fisheries and Aquaculture.

37 (b) The member of the committee appointed by the Joint Legislative Committee
38 on Fisheries and Aquaculture shall meet and, except as otherwise provided by the
39 California Constitution, advise the committee, to the extent that this advisory

1 participation is not incompatible with his or her position as a Member of the
2 Legislature.

3 **Comment.** Section 16350 continues former Fish and Game Code Section 15700 without
4 substantive change.

5 **§ 16355. Term of membership**

6 16355. (a) The term of membership for members of the committee other than
7 representatives of public agencies shall be three years.

8 (b) The representatives of public agencies shall serve at the pleasure of the
9 agency that the member represents.

10 **Comment.** Section 16355 continues former Fish and Game Code Section 15701(a) without
11 substantive change.

12 **§ 16360. Compensation**

13 16360. Members of the committee shall serve without compensation.

14 **Comment.** Section 16360 continues former Fish and Game Code Section 15701(b) without
15 change.

16 **§ 16365. Meetings**

17 16365. The committee shall meet on the call of the director, but not less than
18 twice each year.

19 **Comment.** Section 16365 continues former Fish and Game Code Section 15703 without
20 change.

21 **§ 16370. Function of committee**

22 16370. (a) The committee shall be advisory to the director on all matters
23 pertaining to aquaculture and shall coordinate activities among public entities.

24 (b) The committee shall assist the director in developing and implementing a
25 state aquaculture plan, identify the opportunities for regulatory relief, assist in
26 development of research and development priorities, assist in the development of
27 criteria to assure that publicly financed pilot programs are compatible with
28 industry needs, and identify other opportunities for industrial development.

29 **Comment.** Section 16370 continues former Fish and Game Code Section 15702 without
30 change.

31 CHAPTER 10. PROHIBITIONS

32 Article 1. General Provisions

33 **§ 16400. Unlawful taking**

34 16400. Any person who takes an aquaculture product without lawful entitlement
35 is subject to prosecution for theft.

36 **Comment.** Section 16400 continues former Fish and Game Code Section 15002 without
37 substantive change.

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

Article 2. Exotic or Transgenic Species

§ 16450. Application of article

16450. (a) Nothing in this article applies to salmon or steelhead trout reared from native California stocks that are propagated and cultured for either of the following:

- (1) Research conducted by, or on behalf of, the department.
- (2) Release into ocean waters for the purpose of recovery, restoration, or enhancement of California’s native salmon and steelhead trout populations pursuant to **Chapter 8 (commencing with Section 6900) of Part 1 of Division 6.**

(b) Nothing in this article authorizes artificial propagation, rearing, or stocking of transgenic freshwater and marine fishes, invertebrates, crustaceans, or mollusks.

Comment. Subdivision (a) of Section 16450 continues the third sentence of former Fish and Game Code Section 15007(a) without substantive change.

Subdivision (b) continues the former Fish and Game Code Section 15007(b) without substantive change.

§ 16455. Definitions

16455. The following definitions govern the provisions of this article:

- (a) “Exotic species” means a fish that is not native to California waters, and that does not currently exist as a viable population in a wild condition in the state.
- (b) “Transgenic” has the meaning specified in Section 1.92 of Title 14 of the California Code of Regulations, as that section read on May 14, 2003.

Comment. Section 16455 continues former Fish and Game Code Section 15007(f) without substantive change.

§ 16460. Prohibitions

16460. (a) In the waters of the Pacific Ocean that are regulated by this state, it is unlawful to spawn, incubate, or cultivate any species of finfish belonging to the family Salmonidae, any transgenic fish species, or any exotic species of finfish.

(b) Except as authorized pursuant to Section 16465, it is unlawful to spawn, incubate, or cultivate any transgenic species of finfish belonging to the family Salmonidae in this state.

(c) Research or experimentation for the commercial production of transgenic salmonids is prohibited.

Comment. Subdivision (a) of Section 16460 continues the first sentence of former Fish and Game Code Section 15007(a) without substantive change.

Subdivision (b) continues the second sentence of former Fish and Game Code Section 15007(a) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 15007(c) without change.

§ 16465. Research pursuant to permit

16465. (a) Medical or scientific research conducted on transgenic finfish species by accredited California academic institutions or private entities for research only

1 and not for commercial production may be authorized pursuant to a permit issued
2 by the department pursuant to Section 671 of Title 14 of the California Code of
3 Regulations, as that section read on May 14, 2003.

4 (b) At a minimum, research activities conducted pursuant to this section shall be
5 conducted in a closed system that has eliminated the risk of escape of transgenic
6 finfish species and any potential disease they may transmit.

7 (c) A permit application applied for pursuant to this section shall include a
8 research plan specifying the objectives and goals of the proposed research.

9 (d) Nothing in this section shall be construed to require the disclosure of
10 proprietary information.

11 **Comment.** Section 16465 continues former Fish and Game Code Section 15007(d) without
12 substantive change.

13 **§ 16470. Notification of permit application**

14 16470. The department shall notify the Joint Committee on Fisheries and
15 Aquaculture and the commission upon receipt of a permit application applied for
16 pursuant to Section 16465, at least 30 days prior to the approval or disapproval of
17 the permit.

18 **Comment.** Section 16470 continues former Fish and Game Code Section 15007(e) without
19 substantive change.

20 **TITLE 16. SPECIAL PROGRAMS**

21 **CHAPTER 1. LIMITED ENTRY FISHERIES**

22 **§ 16550. Eligibility**

23 16550. (a) Any commercial fisher shall be eligible for inclusion during the
24 initial year of a limited entry fishery established by statute that becomes operative
25 after January 1, 1982, or by regulation that becomes operative after January 1,
26 1999, regardless of the prescribed conditions for entry into the fishery, if the
27 commercial fisher presents to the department satisfactory evidence that he or she
28 has been licensed as a California commercial fisher for at least 20 years and has
29 participated in the fishery for at least one of those 20 years, with qualifying
30 participation in the fishery to be determined by the commission based on landings
31 or other appropriate criteria.

32 (b) Commercial fishers who have established eligibility to participate in a
33 limited entry fishery under this section are subject to conditions of continuing
34 eligibility established by statute or regulation if those fishers desire to maintain
35 their eligibility.

36 **Comment.** Section 16550 continues former Fish and Game Code Section 8101 without
37 substantive change.

1 **§ 16555. Partnerships**

2 16555. (a) The Legislature finds and declares that, in some limited entry
3 fisheries, two or more partners may be operating with one of the partners holding
4 the permit to participate in the fishery. The Legislature further finds and declares
5 that undocumented, de facto, family partnerships are a longstanding custom in
6 these fisheries. The Legislature further finds and declares that great hardship
7 results when the permittee partner is no longer able to continue working and
8 leaves the other partner without a permit to continue participating in the fishery.

9 (b) In any limited entry fishery in which permits are allocated to participants in
10 the fishery, and where the death, incapacity, or retirement of a permittee from that
11 fishery would deprive a working partner of the permittee of the ability to continue
12 to derive a livelihood from that fishery, a permit shall be issued, upon application,
13 to one remaining partner.

14 (c) A working partner for the purposes of this section shall be a spouse, child
15 (including an adopted child), or sibling of the permittee, whose investment or
16 equity need not be proven by documentation, or a person who can prove an
17 investment or equity in the vessel or gear used in the fishery, and who would
18 otherwise have been eligible for a permit and did not obtain one because he or she
19 was working with or was a partner with the permittee.

20 (d) The working partner shall also provide substantial evidence of an actual
21 physical working participation aboard the vessel supported by the submission of
22 documents filed with the Franchise Tax Board and supported by trip settlement
23 sheets or similar documents that demonstrate earnings from that participation.
24 “Trip settlement sheet” for purposes of this subdivision means a document
25 prepared after a vessel has completed a fishing trip which displays the costs
26 incurred, revenues received, and profits paid out. Investment or equity alone does
27 not establish that the person is a working partner.

28 (e) Those existing working partners other than the family relationships specified
29 in subdivision (c) may, not later than February 1, 1984, declare and prove the
30 working partnership in a manner satisfactory to the department and request that the
31 department state the fact of the working partnership upon the permit. Thereafter, a
32 nonfamily working partnership shall be declared, proved, and noted upon any
33 limited entry permit at the first issuance of the permit.

34 (f) This article does not apply to permits to take herring for roe in California.

35 **Comment.** Section 16555 continues former Fish and Game Code Section 8102 without
36 substantive change.

37 **§ 16560. Accidental death of permittee**

38 16560. (a) The Legislature finds and declares as follows:

39 (1) The accidental death of a limited entry permittee results in great hardships on
40 the permittee’s family.

41 (2) Under the law as it existed immediately prior to January 1, 1987, if a
42 member of the permittee’s family has not been actively working in the fishery, the

1 limited entry permit could not be transferred to a member of the family, an action
2 which deprives the family of the opportunity to continue to derive a livelihood
3 from the fishery and which imposes greater hardships.

4 (3) When there is an accidental death of a limited entry permittee, a transition
5 period is necessary to allow a family member to join the fishery and to become
6 acclimated, knowledgeable, and experienced in the fishery.

7 (b) Notwithstanding Section 16555, the department shall transfer a permit for a
8 limited entry fishery, upon application, to a parent, spouse, child, or sibling of a
9 permittee whose death was the result of an accident that occurred after January 1,
10 1986.

11 (c) Application for the transfer of a permit pursuant to subdivision (b) shall be
12 made on or before January 1, 1987, or not more than one year after the death of
13 the permittee, whichever is later.

14 (d) The director may authorize another person, when requested by the new
15 permittee, to serve in the place of the new permittee and to engage in fishing
16 activities under the authority of the limited entry permit for not more than two
17 years from the date of the permit transfer.

18 (e) "Accidental death" means death resulting directly and solely from any of the
19 following:

20 (1) An accidental injury visible on the surface of the body or disclosed by an
21 autopsy, sustained solely by external, violent, and accidental means.

22 (2) A disease or infection resulting directly from an accidental injury and
23 beginning within 30 days after the date of the injury.

24 (3) An accidental drowning.

25 **Comment.** Section 16560 continues former Fish and Game Code Section 8103 without
26 substantive change.

27 CHAPTER 2. COMMERCIAL FISHERIES CAPACITY REDUCTION
28 PROGRAM

29 **§ 16600. Federal groundfish buy-back program**

30 16600. It is the intent of the Legislature to enact legislation establishing a
31 comprehensive program to allow California groundfish fishers to participate in any
32 federally established buy-back program for the Pacific groundfish fishery.

33 **Comment.** Section 16600 continues former Fish and Game Code Section 7630 without
34 substantive change.

35 **§ 16605. Establishment of program**

36 16605. There is hereby established the Commercial Fisheries Capacity
37 Reduction Account in the Fish and Game Preservation Fund. Fees collected
38 pursuant to Section 16610 shall be deposited into the account. Money in the
39 account shall be used to repay the California fishers' share of any federal loans
40 used in the federal West Coast Groundfish Fishery Capacity Reduction Program

1 (Sec. 212, P.L. 107-206).

2 **Comment.** Section 16605 continues the first and second sentences of former Fish and Game
3 Code Section 8125 without substantive change.

4 **§ 16610. Capacity reduction fee**

5 16610. The commission shall establish a capacity reduction fee on the taking of
6 certain species of fish and shellfish, consistent with the West Coast Groundfish
7 Fishery Capacity Reduction Program. In establishing the fee, the commission shall
8 also consider the administrative cost associated with collecting these fees.

9 **Comment.** Section 16610 continues former Fish and Game Code Section 8126 without
10 change.

11 **§ 16615. Regulation conforming state law with federal law**

12 16615. The commission may establish, by regulation, any additional program
13 elements necessary to conform state law to federal law, in order to allow
14 California groundfish fishers to fully participate in the federally established buy-
15 back program for the Pacific groundfish fishery.

16 **Comment.** Section 16615 continues the third sentence of former Fish and Game Code Section
17 8125 without substantive change.

18 CHAPTER 3. INSURANCE POOLING

19 **§ 16650. Loss or damage to vessel or machinery**

20 16650. (a) Any person engaged in the business of licensed commercial fishing
21 may enter into an arrangement with other authorized persons for the pooling of
22 funds to pay claims or losses arising out of loss or damage to a vessel or
23 machinery used in the business of commercial fishing and owned by a member of
24 the pool. A pool established pursuant to this section is not, and shall not be,
25 subject to the Insurance Code and is not a member of the California Insurance
26 Guarantee Association under Article 14.2 (commencing with Section 1063) of
27 Chapter 1 of Part 2 of Division 1 of the Insurance Code.

28 (b) The pool established pursuant to this section shall have initial pooled
29 resources of not less than two hundred fifty thousand dollars (\$250,000), and shall
30 operate under generally acceptable accounting principles.

31 (c) All participating persons in any pool established pursuant to this section shall
32 agree to pay premiums or make other mandatory financial contributions or
33 commitments necessary to ensure a financially sound risk pool.

34 (d) For the purpose of this section, “person engaged in the business of licensed
35 commercial fishing” and “authorized person” mean any natural person,
36 partnership, corporation, limited liability company, or other person or entity
37 engaged in the business of fishing for commercial purposes for which that person
38 or its agents or employees are required to be licensed.

1 **Comment.** Section 16650 continues former Fish and Game Code Section 7690 without
2 substantive change.

3 TITLE 17. MAGNUSON-STEVENSON FISHERY
4 CONSERVATION AND MANAGEMENT ACT

5 CHAPTER 1. GENERAL PROVISIONS

6 **§ 16750. Defined terms**

7 16750. As used in this title:

8 (a) “Act” means the Magnuson-Stevens Fishery Conservation and Management
9 Act (16 U.S.C. Sec. 1801 et seq.).

10 (b) “Council” means the Pacific Fishery Management Council established
11 pursuant to the act, or its successor agency.

12 (c) “Fishery” has the same meaning as defined in Section 1802(13) of Title 16 of
13 the United States Code.

14 (d) “Joint committee” means the Joint Committee on Fisheries and Aquaculture
15 created pursuant to Resolution Chapter 88 of the Statutes of 1981.

16 (e) “Optimum,” with respect to the yield from a fishery, has the same meaning
17 as defined in Section 1802(28) of Title 16 of the United States Code.

18 (f) “Secretary” means the federal Secretary of Commerce.

19 **Comment.** Section 16750 continues former Fish and Game Code Section 7650 without
20 substantive change.

21 **§ 16755. Declaration of legislative findings**

22 16755. The Legislature finds and declares:

23 (a) That the actions taken by the federal Pacific Fishery Management Council
24 have resulted in significant economic losses to California’s salmon and groundfish
25 fisheries, have caused significant waste of fish, and have failed to manage and
26 conserve fisheries for their optimum yield.

27 (b) That the California Salmon Fishery has been severely affected by regulations
28 imposed by the Pacific Fishery Management Council and the federal Department
29 of Commerce.

30 (c) That the membership of the Pacific Fishery Management Council has never
31 included a commercial salmon troll fisher, and has at times lacked balance and
32 representation from major fisheries subject to the fishery management plans of the
33 council.

34 **Comment.** Section 16755 continues former Fish and Game Code Section 7654 without
35 substantive change.

36 **§ 16760. Declaration of policy**

37 16760. (a) It is the policy of the state that it be represented on the Pacific Fishery
38 Management Council by people who are knowledgeable about fisheries directly

1 subject to the fishery management plans of the council. Nominations and
2 appointments to the Pacific Fishery Management Council shall be a balanced
3 representation of interested parties, including, but not limited to, representatives
4 from the commercial salmon troll fishery, the groundfish fishery, the coastal
5 pelagic species fishery, the seafood processing industry, the commercial passenger
6 carrying fishing industry, nongovernmental environmental organizations, and
7 marine scientists.

8 (b) When the Governor nominates persons for any seat on the Pacific Fishery
9 Management Council, those individuals shall be knowledgeable of California's
10 fishery resources and its fishing industry. Further, the nominations may be made
11 after consultation with fishery organizations and other interested parties, including
12 parties representing the public's interest in the fishery resources and marine
13 environment.

14 **Comment.** Section 16760 continues former Fish and Game Code Section 7655 without
15 substantive change.

16 **§ 16765. Inapplicability of Administrative Procedure Act**

17 16765. Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of
18 the Government Code does not apply to this title.

19 **Comment.** Section 16765 continues former Fish and Game Code Section 7652(d) without
20 substantive change.

21 **CHAPTER 2. ADOPTION OF NEW REGULATIONS**

22 **§ 16800. Required public hearing**

23 16800. (a) Notwithstanding any other section of this title or any other law, the
24 director shall hold a public hearing or hearings in the area of the fishery under
25 consideration after a recommendation by the council to the secretary of a fishery
26 management plan or amendment of a fishery management plan pursuant to the act,
27 or after approval by the secretary of a fishery management plan or amendment of a
28 fishery management plan pursuant to the act.

29 (b) If the secretary approves a fishery management plan or amendment of a
30 fishery management plan that is substantially identical to a fishery management
31 plan or amendment of a fishery management plan that has been recommended by
32 the council, and the director has held a public hearing on the council's
33 recommended fishery management plan or amendment of a fishery management
34 plan, the director is not required to hold a second public hearing under this section
35 after the approval by the secretary.

36 (c) The hearing shall be held not less than four days after the recommendation
37 by the council to the secretary of a fishery management plan or amendment of a
38 fishery management plan, or after the approval by the secretary of a fishery
39 management plan or amendment of a fishery management plan. The director shall
40 arrange the time and place of the hearing, shall provide adequate public notice and

1 adequate notice to the appropriate standing policy committee of each house of the
2 Legislature and to the joint committee, and shall convene the hearing at the time
3 and place arranged.

4 (c) At the hearing or hearings, the director shall take evidence of the effects any
5 proposed regulation would have on the state's fishery resources, the commercial or
6 recreational fishing industry, and the state's ability to manage fishery resources in
7 state waters.

8 (d) After the hearings, the director shall submit a written report to the
9 Legislature that summarizes the reasons for the proposed regulation.

10 (e) The report to the Legislature shall be delivered or placed in the United States
11 Postal Service addressed to the Chairperson of the Joint Committee on Fisheries
12 and Aquaculture and to the chairperson of the appropriate policy committee of
13 each house of the Legislature.

14 **Comment.** Subdivisions (a) through (d) of Section 16800 continue former Fish and Game
15 Code Section 7652.1 without substantive change.

16 Subdivision (e) continues the part of former Fish and Game Code Section 7652.3(b) applicable
17 to former Fish and Game Code Section 7652.1 without change.

18 **§ 16805. Adoption of regulations to conform state law**

19 16805. Upon the preparation by the council, and the recommendation by the
20 council to the secretary, of a fishery management plan or amendment of a fishery
21 management plan pursuant to the act, or upon the approval by the secretary of a
22 fishery management plan, or amendment of a fishery management plan, pursuant
23 to the act, the director may do any of the following to conform state law or
24 regulations of the commission to the fishery management plan, or amendment of a
25 fishery management plan, if the director finds that the action is necessary to
26 achieve optimum yield in California, and that it is necessary to avoid a substantial
27 and adverse effect on the plan by that state law or the regulations in order to
28 continue state jurisdiction pursuant to Section 1856 of the act:

29 (a) Adopt regulations that would make inoperative any statute or regulation of
30 the commission, including, but not limited to, statutes or regulations regulating
31 bag limits, methods of taking, and seasons for taking of fish for commercial
32 purposes.

33 Any regulation adopted by the director pursuant to this subdivision shall specify
34 the particular statute or regulation of the commission to be inoperative.

35 (b) Adopt regulations governing phases of the taking of fish for commercial
36 purposes that are not presently regulated by statute or regulation of the
37 commission.

38 (c) Adopt regulations governing phases of the taking of fish for commercial
39 purposes that are presently regulated by statute or regulation of the commission,
40 but only if the statutes or regulations are first made inoperative pursuant to
41 subdivision (a) for the effective period of the regulations adopted by the director
42 pursuant to this subdivision.

1 **Comment.** Section 16805 combines and continues former Fish and Game Code Section
2 7652(a)-(c) without substantive change.

3 **Staff Note.** Existing Fish and Game Code Section 7652 (which would be continued by
4 proposed Section 16805) authorizes the Director of the Department of Fish and Wildlife, after
5 complying with procedural requirements in the article in which that section appears, to “adopt
6 regulations that would make inoperative any statute,” if the Director finds the adoption necessary
7 for purposes specified in the section. This significant delegation of legislative authority is
8 unusual, but at least as the section read in 1981, the delegation was found constitutional in
9 *Salmon Trollers Marketing Assn. v. Fullerton*, 124 Cal. App. 3d 291, 177 Cal. Rptr. 362 (1981).

10 However, the finding of constitutionality in *Salmon Trollers* was based at least in part on two
11 aspects of the statutory article in which Section 7652 appears that no longer exist.

12 First, in finding meritless a claim that the scheme embodied by the article provided insufficient
13 procedural due process, the court noted that the Director’s regulatory authority remained subject
14 to the California Administrative Procedure Act (Gov’t Code § 11340 et seq.). However, in 1984,
15 Section 7652 was amended to add substitute procedural protections to the article in Fish and
16 Game Section 7652.1, and expressly provide that the Administrative Procedure Act did *not* apply
17 to the Director’s actions under Section 7652. See 1984 Cal. Stat. ch. 1301.

18 Second, the court in *Salmon Trollers* appeared to significantly rely on a part of Section 7652 as
19 it read in 1981, which authorized the Director to render a statute inoperative for no more than 180
20 days. This limitation was also removed from the statute in 1984, with no substituted limitation.
21 See 1984 Cal. Stat. ch. 1301. As a result, Section 7652 arguably presently empowers the Director,
22 after conducting the hearings and making the findings required by the statute, to render any
23 statute enacted by the Legislature permanently inoperative.

24 **The staff invites comment on whether that is the intended meaning of Section 7652, and if
25 not, whether proposed Section 16805 should clarify the section’s intended meaning.**

26 **§ 16810. Hearing and report to Legislature prerequisite to adoption of regulation**

27 16810. The director shall not adopt any regulation pursuant to this chapter until
28 the director has held one or more hearings, and submitted a report to the
29 Legislature, pursuant to Section 16800.

30 **Comment.** Section 16810 continues the part of former Fish and Game Code Section 7652.3(a)
31 applicable to adoption of regulations under former Fish and Game Code Section 7652.1, without
32 substantive change.

33 **§ 16815. Report to Legislature of need to conform state law**

34 16815. Upon the adoption of any regulation pursuant to Section 16805, the
35 director shall report to the Legislature which statutes or regulations of the
36 commission need to be amended or repealed, and any regulations adopted by the
37 director that need to be enacted as statutes, to conform state law to any fishery
38 management plan, or amendment of a fishery management plan, that has been
39 approved by the secretary, to avoid any substantial and adverse effect on such plan
40 or amendment by that state law.

41 **Comment.** Section 16815 continues former Fish and Game Code Section 7653 without
42 substantive change.

1 CHAPTER 3. REPEAL OR AMENDMENT OF REGULATIONS

2 **§ 16850. Amendment or repeal of regulation by director**

3 16850. (a) The director may repeal or amend any regulation adopted pursuant to
4 Section 16805, or any other regulation, to conform the regulation to federal
5 regulations pursuant to the act, if the director finds that this action is necessary to
6 achieve optimum yield in California.

7 (b) Notwithstanding any other section of this title or any other law, the director
8 shall hold a public hearing or hearings in the area of the fishery under
9 consideration before the director repeals or amends any regulation pursuant to this
10 section. The director shall arrange the time and place of the hearing or hearings,
11 shall provide adequate public notice and adequate notice to the appropriate
12 standing policy committee of each house of the Legislature and to the joint
13 committee, and shall convene the hearing or hearings at the time and place
14 arranged.

15 (c) At the hearing or hearings, the director shall take evidence of the effects the
16 proposed repeal or amendment would have on the state's fishery resources, the
17 commercial or recreational fishing industry, and the state's ability to manage
18 fishery resources in state waters.

19 (d) After the hearing or hearings, the director shall submit a written report to the
20 Legislature that summarizes the reasons for the proposed repeal or amendment.

21 (e) The report to the Legislature shall be delivered or placed in the United States
22 Postal Service addressed to the Chairperson of the Joint Committee on Fisheries
23 and Aquaculture and to the chairperson of the appropriate policy committee of
24 each house of the Legislature.

25 **Comment.** Subdivisions (a) through (d) of Section 16850 continue former Fish and Game
26 Code Section 7652.2 without substantive change.

27 Subdivision (e) continues the part of former Fish and Game Code Section 7652.3(b) applicable
28 to former Fish and Game Code Section 7652.2 without change.

29 **§ 16855. Hearing and report to Legislature prerequisite to amendment or repeal of**
30 **regulation**

31 16855. The director shall not amend or repeal any regulation pursuant to this
32 chapter until the director has held one or more hearings, and submitted a report to
33 the Legislature, pursuant to Section 16850.

34 **Comment.** Section 16855 continues the part of former Fish and Game Code Section 7652.3(a)
35 applicable to amendment or repeal of regulations under former Fish and Game Code Section
36 7652.2, without substantive change.

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)
7147	15130	8033(a)	317, 13950
7630	16600	8033(b)	13955(a)
7650	16750	8033(c)	13960
7652(a)-(c)	16805	8033.1(a)	364, 14100
7652(d)	16765	8033.1(b)	14110
7652.1	16800(a)-(d)	8033.2	14105(a)
7652.2	16850(a)-(d)	8033.5(a) (1st sent.)	318, 14000
7652.3(a)	16810, 16855	8033.5(a) (2nd sent.)	14005(a)
7652.3(b)	16800(e), 16850(e)	8033.5(b)	omitted
7653	16815	8034 (a) (1st sent.)	316, 13900(a)
7654	16755	8034(a) (2nd sent.)	13905(a)
7655	16760	8034(b)	omitted
7690	16650	8035(a)	319, 14050(a)
7700	14800	8035(b)	14055(b)
7701	14810	8035(c)	14050(b)
7702	14815	8036(a) (1st sent.)	315.5, 13850
7702.1	15010	8036(a) (2nd sent.)	13855
7703	14820	8036(b)	omitted
7704(b)	15000	8037(a) (1st sent.)	13800
7705	14950	8037(a) (2nd sent.)	13720
7706	15050	8037(b)	omitted
7707	15055	8038	13715
7708	14805	8039	13730(c), 13855(b), 13905(b), 13955(b), 14005(b), 14055(b), 14105(b)
7710	15400	8040(a)	omitted
7710.1	15410	8040(b)	14200
7710.5	15405	8041	14250
7712	15415	8042(a)	14255(a)
7852.27	13725	8042(b)	14255(b)
7920 (1st, 3rd para.)	257, 258, 15105	8043(a) (1st sent.)	14300(a)
7920 (2nd para.)	15100	8043(a) (2nd sent.)	14305(a)
7921 (1st sent.)	15115	8043(b)	14320
7921 (2nd sent.)	15110	8043(c) (1st sent.)	14325(b)
7923	15120(a)	8043(c) (2nd, 3rd sent.)	14325(c)
7924	15125	8043(c) (4th sent.)	14455
8010	15310	8043.1(a)	14300(a)
8025(a)	14700, 15315	8043.1(b)	14205
8025(b)	omitted	8043.1(c) (1st sent.)	14305(b)
8026	15300(a), (b)	8043.1(c) (2nd sent.)	14305(c)
8030	13700	8043.2(a)	14310
8031(a)(1) (1st, 2nd sent.)	13900(a)	8043.2(b)	14750
8031(a)(1) (3rd sent.)	13900(b)	8043.2(c)	14755
8031(a)(2)-(4)	omitted	8045	14320(a), 14520(a)
8031(b)	omitted	8046(a) (1st sent.)	14450
8032(a)	13705(a), 13730(a)	8046(a) (2nd-4th sent.)	14400
8032(b)	13705(b)	8046(b)	14315
8032(c)	13730(b)	8046(c)	14410
8032.5(a)-(b), (d)-(i)	13710	8046.1	14415
8032.5(c)	13735		

8047(a)(1) (1st sent.)	14305(c)	8125 (1st, 2nd sent.)	16605	
8047(a)(1) (2nd sent.)	14450	8125 (3rd sent.)	16615	
8047(a)(1) (3rd sent.)	14405	8126	16610	
8047(a)(1) (4th sent.)	14410	8460 (1st para.)	358, 15200(a)	
8047(a)(2) (1st sent.)	14510(b)	8460 (2nd para.)	15205, 15215	
8047(a)(2) (2nd sent.)	14300	8460 (3rd para.)	15200(b)	
8047(a)(2) (3rd sent.)	14300(a)(3)	8460 (4th para.)	15120(b), 15300(c)	
8047(a)(2) (4th sent.)	14515	8461	15210	
8047(b) (1st sent.)	14300(a)(3)	8462	15220	
8047(b) (2nd sent.)	14250	8463	15225	
8047(b) (3rd sent.)	14325(a)	8597	363	
8047(b) (4th sent.)	omitted	12022.4	15140	
8047(b) (5th sent.)	14405(a)	12002.7	15135	
8047(b) (6th sent.)	14405(b)	15000(a)	15505	
8047(c)(1)	14510, 14515	15000(b)-(d)	15500	
8047(c)(2) (1st sent.)	14530	15001	15510	
8047(c)(2) (2nd sent.)	14525(a)	15002	16400	
8047(c)(2) (3rd sent.)	14525(b)	15003	80477(c)	14505
8047(c)(3)	14505	15004(a)-(b)	15605	
8047(c)(4)	13950	15004(c)	15600	
8047(c)(5)	14500	15005	15555	
8047(d)	14520	15006	15500	
8047(e) (1st sent.)	14515	15007(a) (1st sent.)	16460(a)	
8047(e) (2nd, 3rd sent.)	14535	15007(a) (2nd sent.)	16460(b)	
8047(e) (4th sent.)	14540	15007(a) (3rd sent.)	16450(a)	
8050	14600	15007(b)	16450(b)	
8051	14255(a)	15007(c)	16460(c)	
8051.4	omitted	15007(d)	16465	
8052	14660	15007(e)	16470	
8053	14650	15007(f)	16455	
8056	14655	15008	15560	
8057	14665(a)	15100	15565	
8058	14665(b)	15101(a)	15655(a)	
8059	14665(c)	15101(b) (1st sent.)	15655(b), 15660, 15700	
8060	14665(d)	15101(b) (2nd, 4th sent.)	15700	
8061	14665(e)	15101(b) (3rd sent.)	15650	
8062	14665(f)	15101(c)	15655(c)	
8063	14665(g)	15102	15755	
8064	14670	15103(a)-(d)	15705	
8065	14675(a)	15103(e)	omitted	
8066	14675(b)	15104	15710	
8067	14675(c)	15105	15715	
8068	14675(d)	15200 (1st sent.)	15750(a)	
8069	14675(e)	15200 (2nd sent.)	15765	
8070	14675(f)	15201	15760	
8075	14850	15202	15750(b)	
8076	15005	15300	15850	
8077	14855	15301(a)	15860	
8078	14860	15301(b)	15855(b)	
8079	14865	15301(c)	15855(b)	
8079.1	14870	15400(a)	15900	
8080	14875	15400(b) (1st sent.)	15905	
8100	357	15400(b) (2nd sent.)	15910	
8101	16650	15400(b)(1)-(10)	15910	
8102	16555	15400(c)	15915	
8103	16560	15400(d)	15920	

15401	15950(c)	15501	16155
15402	16060	15502	16160
15403 (1st sent.)	15950(a)	15503	16165(a)
15403 (2nd sent.)	15950(b)	15504	16165(b)
15403(a)-(d)	15950(b)	15505	16170
15403 (last para.)	16055	15506	16175
15404	15955	15507	16180
15405	16000	15508	16185
15406	16010(a)-(d)	15509	16195
15406.5(a) (1st sent.)	15965(a)	15510	16190
15406.5(a) (2nd sent.)	16010(e)	15512	16250
15406.5(a) (3rd sent.)	15965(b)	15513	16255
15406.5(b)	15965(c)	15514	16260
15406.7	16020	15516	16265
15407	16050	15600(a)	16305
15408	16070(a)	15600(b)	16310
15409	16070(b)-(e)	15601	16315
15410	16005	15604	16320
15411	16065	15605	16300
15412	16075	15700	16350
15413	16100	15701(a)	16355
15414	16015	15701(b)	16360
15415	15960	15702	16370
15500	16150	15703	16365