

Memorandum 2016-26

Fish and Game Law: Next Steps

In response to a request from the Legislature, the Commission¹ has been preparing a proposed recodification of the Fish and Game Code. This work has been proceeding incrementally, with the staff presenting a series of drafts of parts of a proposed new code, identified by subject matter. The Commission does a preliminary review of those drafts, including consideration of any issues that the staff may raise in connection with their content. The Commission will also consider any public comment that it later receives on any draft. Eventually the presented preliminary drafts, with any changes made to reflect subsequent Commission decisions, are to be incorporated in a tentative recommendation.

The Commission has not yet discussed when that tentative recommendation (or tentative recommendations) should be prepared and distributed.

The staff believes that now would be a good time to have that discussion. The staff draft presented in Memorandum 2016-25, which is scheduled for discussion at the June meeting, will largely complete the staff's preliminary presentation of a major part of the proposed new code. Once the Commission reviews that draft, it will have completed its initial review of most provisions of the proposed code that would govern hunting, trapping, and fishing (as well as preliminary and administrative provisions).

The subject matter addressed by that body of material has a related theme, and is probably of primary interest to a discrete group of stakeholders and regulators. For that reason, it occurred to the staff that it might make sense to prepare and release a tentative recommendation containing that body of material at this time, rather than waiting until the Commission had completed its preliminary review of drafts of the entire proposed code.

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.

That possibility is discussed in this memorandum.

TIMING OF TENTATIVE RECOMMENDATION

A typical Commission study follows a straightforward arc. The Commission works its way through the relevant law and policy until it has a provisional proposal. It then releases a tentative recommendation presenting that proposal. After receiving public comment, the Commission makes any changes to the tentative recommendation that are warranted, and approves a final recommendation.

In a study of this size, it might make sense to slightly modify that linear approach. Rather than waiting until an entire preliminary draft of the proposed new Fish and Wildlife Code has been prepared, the Commission could release two or more partial tentative recommendations, at natural breaking points in the drafting process.

That incremental approach would have the following advantages:

- (1) It would make it easier for discrete groups of stakeholders to read and evaluate only the parts of the proposed code that govern their areas of interest.
- (2) It would space out the reviewing process over a longer period of time. If the Commission were instead to wait and release a tentative recommendation at the end of the drafting process, reviewers who are interested in the entire code would have a massive amount of material to work through in a relatively compressed period of time.
- (3) It would provide a clear milestone to those who are interested in monitoring the Commission's progress in this study.
- (4) It could prompt broad comment on the Commission's overall study approach that might be more easily incorporated before an entire draft of the new proposed code had been prepared.

Distributing multiple tentative recommendations would have one possible disadvantage. Because there would be a significant interval of time between the release of the first tentative recommendation and the eventual introduction of legislation that would implement a final recommendation, the Commission would probably need to revisit and update some parts of that tentative recommendation to address interim changes in the law, and any interim concerns raised by the public.

However, some amount of updating will need to be done regardless of whether the Commission releases incremental tentative recommendations. Even without a tentative recommendation, the law that is expressed in provisional staff drafts will likely become partially obsolete before a bill is introduced.

It is worth noting that in each of the Commission's prior code recodification studies (i.e., the recodification of the Family Code and the Probate Code), the Commission released multiple incremental tentative recommendations.²

On balance, the staff favors the preparation and release of incremental tentative recommendations in this study, beginning with the subject matter of the proposed law the Commission will have addressed through its June meeting. If the Commission agrees, the staff will prepare a draft tentative recommendation that includes all of the preliminary draft material that the Commission will have reviewed through that meeting (including the draft attached to Memorandum 2016-25). That draft tentative recommendation will also include some fairly significant technical adjustments to those preliminary drafts, to reflect organizational and drafting decisions that the Commission has made since the drafts were first reviewed.

How would the Commission like to proceed?

Respectfully submitted,

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2. See, e.g., Tentative Recommendation on *Family Code: Child Custody Issues* (October 1992), Tentative Recommendation on *Family Code: Reorganization of Domestic Violence Provisions* (September 1992); Tentative Recommendation on *Community Property in Joint Tenancy Form* (September 1992); Tentative Recommendation on *Estate and Trust Code (Opening Estate Administration)* (February 1986), Tentative Recommendation on *Proration of Estate Taxes* (August 1985), Tentative Recommendation on *Distribution Under A Will Or Trust* (August 1984).