

Fifth Supplement to Memorandum 2016-47

Fish and Game Law: Discussion of Issues

Fish and Game Code Section 2003 generally prohibits hunting and fishing contests, with specific exceptions.

The Second Supplement to Memorandum 2016-47¹ recommends, among other things, that Section 2003 be revised, for purposes of a tentative recommendation, to refer to “game mammals” rather than mammals generally.

The Third Supplement to Memorandum 2016-47 suggests that “fur-bearing mammals” be added to that provision.

In conducting further research, the staff discovered that the Fish and Game Commission (“FGC”) recently adopted regulations that expressly provide that Section 2003 applies to both fur-bearing mammals and non-game mammals:

Pursuant to Fish and Game Code Section 2003, it is unlawful to offer any prize or other inducement as a reward for the taking of furbearers in an individual contest, tournament, or derby.²

Pursuant to Fish and Game Code Section 2003, it is unlawful to offer any prize or other inducement as a reward for the taking of nongame mammals in an individual contest, tournament, or derby.³

The FGC’s “Final Statement of Reasons” for those regulations explains:

Section 2003 of Fish and Game Code (FGC), subsection (a) prohibits offering prizes or other inducements “for the taking of game birds, mammals, fish, reptiles or amphibians in an individual contest, tournament or derby.” However, Section 2003, FGC, then goes on to provide limited exceptions to this rule. These exceptions permit take of game fish if permitted by the Department of Fish and Wildlife (Department), frog-jumping contests, fish contests

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. 14 Cal. Code Regs. § 465(b).

3. 14 Cal. Code Regs. § 472(e).

conducted in the waters of the Pacific Ocean, and, in subsection (d), the offering of prizes “for the taking of game birds and mammals, if the total value of all prizes or other inducements is less than five hundred dollars (\$500).” The Commission’s proposed regulatory changes resolve the potential inconsistent treatment of “game” and “nongame mammals” in subsections (a) and (d) by clarifying that Section 2003, FGC, prohibits offering prizes or inducements for take of all mammals (game, nongame, and furbearers) in subsection (a), and, in subsection (d) permits prize offerings of less than \$500 only for the take of game mammals.

The Commission reasons the word “game” preceding “birds” in subsection (a) was not intended to apply to “mammals” because the use of a comma between “birds” and “mammals” makes clear that “game” only applies to “birds” in this general prohibition. Subsection (a) is clearly a longstanding broad prohibition protecting game birds and all mammals, fish, reptiles, and amphibians. Turning to subsection (d), the Commission further reasons that in this later added subsection the word “game” preceding “birds” was intended to apply to “mammals.”

The Commission views the alternative reading of subsection 2003(d), FGC, permitting inducements for the unlimited take of furbearers and nongame mammals as unsportsmanlike and likely not the intent of the legislature in the 2004 amendment adding subsection (d). The Commission believes that offering inducements for hunting contests of animals with no regulated take does not reflect good sportsmanship or the likely intent of the legislature. Therefore, the Commission believes the changes to sections 465 and 472 clarify the proper interpretation of subsection 2003(d), FGC, and recognize and encourage sportsmanlike behavior.⁴

If the Commission would like to codify FGC’s stated interpretation of Section 2003, for the purposes of the tentative recommendation, it could do so with the following revisions to Section 2003:

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

(b) The department may issue a permit to a person authorizing that person to offer a prize or other inducement as a reward for the taking of a game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in

4. Available at <<http://www.fgc.ca.gov/regulations/2014/465fsor.pdf>>

issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons who are under 16 years of age or have a physical or mental disability, and the primary purpose of the contest, tournament, or derby is to introduce those anglers to or educate them about fishing. All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

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

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

Respectfully submitted,

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