

Memorandum 2017-59

Fish and Game Law: Funding Analysis

In this study, the Commission¹ is developing a proposed recodification of the Fish and Game Code. In connection with that work, the Legislature directed the Commission to “clarify ... funding sources.”²

Currently, the Commission is conducting an analysis of the funding mechanisms within the Fish and Game Code. At its September meeting, the Commission adopted a provisional methodology for the conduct of that analysis.³ Key features of the methodology include:

- The analysis will be used to prepare a purely descriptive report. The report will not include any normative assessment of the adequacy of the funding scheme or any recommendations for reform.
- The analysis will be limited to the content of the Fish and Game Code. Budget bills, uncodified provisions, and administrative materials will not be included.
- The analysis will be limited to the funding and duties of the Fish and Game Commission and the Department of Fish and Wildlife. Local entities and other state agencies will not be included.
- The analysis will not include any assessment of whether specific programs “[relate] to the protection or propagation of fish and game.”⁴

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 2016 Cal. Stat. res. ch. 150.

3. See Minutes (Sept. 2017), p. 6 (attached to Memorandum 2017-47).

4. See Cal. Const. art. XVI, § 9 (“Money collected under any state law relating to the protection or propagation of fish and game shall be used for activities relating thereto.”). See also Fish and Game Code §§ 711(a)(1) (“The costs of nongame fish and wildlife programs shall be provided annually in the Budget Act by appropriating money from the General Fund, through nongame user fees, and sources other than the Fish and Game Preservation Fund to the department for these purposes.”) & 712 (“It is the intent of the Legislature that the Department of Finance shall not include in the Governor’s Budget any appropriation from the Fish and Game Preservation Fund for any program or project which is not expressly found to be an activity

- The work will proceed in four stages:
 - (1) *A description of the accounts and funds established in the Fish and Game Code.* That stage has been completed. The description was attached to Memorandum 2017-45.
 - (2) *A description of revenue sources that do not have any fund or account designated for their deposit.* That description is attached to this memorandum.
 - (3) *A description of programs for which there is no specifically-designated revenue source.*
 - (4) *All of the information compiled in the first three stages will be compiled into an informational report.* The exact structure and formality of that report will be decided later, when all of the relevant information is in hand.

Revenue Without Designated Fund or Account

The table attached to this memorandum lists Fish and Game Code provisions that specify a source of revenue but do not designate a fund or account to be used for the deposit of the revenue. (All further references to revenue provisions in this memorandum should be understood to exclude revenue provisions that do designate a specific fund or account for deposit of the revenue.)

The provisions listed in the attached table were identified by searching the Fish and Game Code for a broad range of revenue-related terms.⁵

The attached table does not include provisions that establish a fine or other penalty, unless the provision prescribes a particular use of the resulting revenue. Nor does it include provisions that authorize the receipt of real or tangible personal property, unless the provision authorizes the sale of the property and use of the proceeds as revenue.

Headings are used to divide the listed provisions into two broad categories:

- (1) *Revenue.* Provisions listed under this heading identify a source of revenue but do not prescribe how that revenue shall be used.
- (2) *Linked Revenue and Expenditures.* Provisions listed under this heading identify a source of revenue and specifically prescribe how the revenue shall be used.

relating to the protection or propagation of fish and game, except to the extent that moneys have been deposited in that fund from collections under a law which is not related to the protection or propagation of fish and game.”).

5. For example, the staff searched for grammatical variations of the following terms: money, cash, revenue, funding, payment, appropriation, assessment, fee, tax, loan, donation, grant, bond, fine, penalty, forfeiture, damages, restitution, compensation, deposit, proceeds, price, sale, acquire, cost.

Important Caveat

There is one important caveat to the approach described above. Fish and Game Code Section 13001 provides a broad catch-all rule for the deposit of money into the Fish and Game Preservation Fund:

Unless otherwise provided, all money collected under the provisions of this code and of any other law relating to the protection and preservation of birds, mammals, fish, reptiles, or amphibia shall be paid into the State Treasury to the credit of the Fish and Game Preservation Fund.

Under that blanket rule, it seems likely that the revenue in most of the provisions listed in Table 1 would be deposited into the Fish and Game Preservation Fund. However, there is some authority suggesting that Section 13001 was only intended to apply to “fish and game” provisions, and not to “nongame” provisions.⁶ As noted above, in the summary of the proposed methodology for this study, the Commission is not making any assessment of whether particular provisions are “fish and game” or “nongame” provisions. Consequently, the staff has not relied on Section 13001 as identifying the fund to be used for deposit of the revenue listed in the attachment. This caveat should be expressly stated in the report that will be prepared to present the funding analysis.

Comment Invited

The staff invites comment, from Commissioners and interested persons and groups, on the content of the attachment and the methods used to prepare it. Suggestions for improvement are welcome.

Respectfully submitted,

Brian Hebert
Executive Director

6. See *Dittus v. Cranston*, 53 Cal. 2d 284, 287 (1959) (“The Fish and Game Preservation Fund is composed of revenue obtained in connection with laws for the protection and preservation of *fish and game* (Fish & G. Code, § 13001) and section 25 5/8 provides that all such revenue ‘shall be used and expended exclusively for the protection, conservation, propagation, and preservation of fish, game, mollusks, or crustaceans and for the administration and enforcement of laws relating thereto.’”) (emphasis added).

REVENUE WITHOUT DESIGNATED FUND OR ACCOUNT

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ADMINISTRATION

Linked Revenue and Expenditures

1050.5 Surcharge to cover cost of accepting credit card
as form of payment.

LAW ENFORCEMENT

Linked Revenue and Expenditures

716.8 Donations to Wildlife Violator Compact board.
857(f) Fee for copy of specified inspection report.
859 Donations for administration of K9 program.

HUNTING, TRAPPING, AND SPORT FISHING

LICENSING

Revenue

329 Special season license.
396 Falconry license.
1053.1 Fee for replacement of lost license or other
validation.
1055.6(d), 1059 Late fees for license agent remittance.
1061 License vouchers.
2536 Guide license.
3031 Hunting License.
3032 Hound tag fee.
3033 Reduced fee hunting license.
3063 Colorado River hunting license.
3242 Commercial hunting club license.
3300, 3308,
3309 License to raise and/or release domesticated
migratory game birds for shooting; inspection
fee; seal.
4006 Trapping license.
7149.05 Sport fishing license.
7149.45 Second rod sport fishing validation.
7150 Reduced fee sport fishing license.
7180.1 Colorado River special use validation.
7186.1 California special use validation.

MISCELLANEOUS

Linked Revenue and Expenditures

- 1575Fee for management and control of Cooperative Hunting Areas.
- 2003Permit fee for game fish contests.

COMMERCIAL FISHING

IMPORTATION

Linked Revenue and Expenditures

- 1068Importer payment, for cost to inspect imported yellowtail, barracuda, and white seabass.
- 2365Importer payment, for cost to inspect imported spiny lobsters.
- 2369Importer payment, for cost to inspect imported pismo clams.

LANDING FEES

Linked Revenue and Expenditures

- 8041, 8052,
8056Landing fees, for administration of laws relating to commercial fishing and other specified purposes.

LICENSES

Revenue

- 7852.2Commercial fishing license late renewal fee.
- 7852.25Bad check charges paid by commercial fishing license applicant.
- 7892Aircraft registration.
- 7921Commercial passenger fishing boat license.
- 8033Fish receiver's license.
- 8033.2Marine aquaria receiver's license.
- 8033.5Fisherman's retail license.
- 8034Fish processor's license.
- 8035Fish wholesaler's license.
- 8036Fish importer's license.
- 8598.3Marine aquaria collector's permit.
- 9001General trap permit.

Linked Revenue and Expenditures

- 7852Commercial fishing license, for license-related administration and implementation costs.
- 7881Commercial boat registration, for registration-related administration and implementation costs.
- 8032Commercial fish business license, for license-related administration and implementation costs.

MARINE FISHERIES

Revenue

- 7082Fee as element of fishery management plan.

Linked Revenue and Expenditures

- 7060Grants, for marine fisheries management research.
- 7090(f)Fee, for cost of regulation of emerging fisheries.

MARKETING

Linked Revenue and Expenditures

- 1069Fee for cost of collecting and remitting sea food marketing council assessments.

NETS

Revenue

- 8561.5, 8564Drift gill net for shark and swordfish permit transfer fees.
- 8567Drift gill net for shark and swordfish permit fee.
- 8610.5, 8610.6Permit to use gill or trammel net in the Marine Resources Protection Zone.
- 8681.5, 8683Gill and trammel net permit renewal and transfer fees.

Linked Revenue and Expenditures

- 8601.5Owner payment of cost of recovery of lost net.
- 8610.12“Commercial fishing industry” shall bear the cost of specified monitoring program.

**WILDLIFE POSSESSION, PROPAGATION, DOMESTICATION,
AND SALE**

Revenue

- 1004Sale of birds and mammals to game domestication businesses.
- 3203Domesticated game breeder's license.
- 4031, 4033Fur dealer license.

Linked Revenue and Expenditures

- 2189Owner payment of costs of seizure, care, holding, transfer, and destruction of unlawful non-native wild animal.
- 6425In addition to specified funds, revenue for artificial reef program may be drawn from California Environmental License Plate Fund, recreational bond act funds, federal grants-in-aid, county fish and game propagation funds, and private donations.

BIRDS

CALIFORNIA CONDOR

Linked Revenue and Expenditures

- 3857If available, private sector and federal funds, for purposes of chapter.

FISH

HALIBUT

Linked Revenue and Expenditures

- 8494(e).....California halibut bottom trawl vessel permit fee, for cost of administering section.

HERRING

Revenue

- 8389Herring license and royalties.
- 8550.5Herring net permit.

LIVE FRESHWATER BAIT FISH

Revenue

- 8461Live freshwater bait fish license.

SALMON

Revenue

8233.4, 8239Transfer of commercial salmon vessel permit.

Linked Revenue and Expenditures

7861.4Funds appropriated pursuant to Public Resources Code Section 5907(e)(1)(A), for certain programs and projects restoring, enhancing, and protecting salmon streams.

8235Renewal of commercial salmon vessel permit, for costs of administering article.

8244Application for new, original commercial salmon vessel permit, for costs of administering the issuance of new, original permits.

STURGEON

Revenue

10001Sturgeon egg processing license fee.

SWORDFISH

Revenue

8394, 8394.5Swordfish permit fee.

TROUT

Linked Revenue and Expenditures

8431Payment of cost of inspection and tagging of Dolly Varden and steelhead trout from outside California that are possessed or sold in the state.

INVERTEBRATES

ABALONE

Linked Revenue and Expenditures

5522(c).....Abalone stamp fee, for preparation of abalone recovery and management plan.

CRAB

Linked Revenue and Expenditures

8276.2Proceeds from sale of Dungeness crab meat collected in quality testing program, for program costs.

- 8276.4(e).....Grant from Ocean Protection Council, for department staff costs associated with Dungeness crab task force.
- 8280.1, 8280.6Dungeness crab vessel permit, for reasonable costs of regulation.
- 9002.5Dungeness crab trap retrieval permit and fees, for reasonable regulatory costs of the program and compensation of person retrieving traps.

LOBSTER

Revenue

- 8254Lobster permit fee.

MOLLUSKS

Revenue

- 1010Royalty for native mollusks moved for purification for human consumption.

SEA CUCUMBERS

Revenue

- 8405.1Permit fee.
- 8405.2Permit transfer fee.

SEA URCHINS

Revenue

- 9054, 9055Sea urchin permit fee.

Linked Revenue and Expenditures

- 5702Revenue received pursuant to former Section 8051.1(b), for grant to sea urchin divers association.

SQUID

Linked Revenue and Expenditures

- 8428Fee for commercial market squid vessel permit and commercial squid light boat owner's permit, for management of the market squid fishery.

PLANTS

KELP

Revenue

- 6651Harvest permit.
- 6680Royalty.
- 6707Kelp bed lease revenue.

WILDLIFE CONSERVATION

CONSERVATION GENERALLY

Revenue

- 711.7Federal payment of state filing and permit fees.
- 12159.5Forfeiture of proceeds from unlawful take of endangered, threatened, of fully protected species.

Linked Revenue and Expenditures

- 711.1Federal Aid in Wildlife Restoration Act, for specified purposes.
- 1227Donations for support of conservation programs generally.
- 1525Donations, for propagating, feeding and protecting birds, mammals, and fish.
- 10503(c)Donations, for propagating, feeding, and protecting birds, mammals, fish, amphibians, and reptiles.

AQUATIC NUISANCE SPECIES

Linked Revenue and Expenditures

- 12023, 12024Payment by person who unlawfully releases aquatic nuisance species, for damages and response costs.

RESEARCH AND EDUCATION

Revenue

- 1002, 1002.5Scientific and educational take permit.

Linked Revenue and Expenditures

- 1005Donations and admission fees, for educational events.

HABITAT CONSERVATION AND ENHANCEMENT

GENERALLY

Revenue

1010Grazing permits.

CALIFORNIA WATERFOWL HABITAT PROGRAM

Revenue

3461, 3465Refunds due under contracts for waterfowl conservation area.

INLAND WETLANDS CONSERVATION PROGRAM

Linked Revenue and Expenditures

1411Funds allocated pursuant to Section 2791(f), for Inland Wetlands Conservation Program.

1412Grants, gifts, donations, subventions, rent, royalties, and other financial support from public and private sources, for Inland Wetlands Conservation Program.

SALTON SEA

Linked Revenue and Expenditures

2081.7(d)(3)Funds from Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, for adaptive management program in connection with implementation of Quantification Settlement Agreement.

2081.7(e)(2)(d)Specified funding sources, for implementation of “preferred alternative” restoration strategy .

2932.2Specified funds pursuant to Water Code Section 79565, for restoration activities.

WILDLIFE AREAS AND RANGES

Revenue

1585Ecological reserve use fee.

Linked Revenue and Expenditures

1500Proceeds of sale of land in area or range, for purchase of land adjacent to area or range.

1525Donations, for establishing wildlife management areas or public shooting grounds.

1528Fee for use of public shooting grounds, state marine (estuarine) recreational management areas, or wildlife management areas, for costs associated with multiple use.

WILDLIFE HABITAT ENHANCEMENT AND MANAGEMENT AREAS

Linked Revenue and Expenditures

3402License fees, for administration of program.

3407Tag fees, for administration of program.

WILDLIFE MANAGEMENT AND CONSERVATION AREAS

Linked Revenue and Expenditures

1005License fee, for costs of administration.

REGULATION OF ACTIVITIES THAT AFFECT WILDLIFE

PLANNING GENERALLY

Linked Revenue and Expenditures

711.4CEQA project fees, for cost of managing and protecting fish and wildlife trust resources.

1857Fee or other compensation, for costs of administering mitigation credit agreement, regional conservation investment strategy, or a regional conservation assessment.

1930.5Funds available from Public Resources Code Section 75055 or from other appropriate bond funds, for study of wildlife corridors and habitat linkages.

1932Grants, cost-sharing, and use fees for administration of Significant Natural Areas Program.

CANNABIS CULTIVATION

Linked Revenue and Expenditures

12029Enhanced fee for streambed alteration related to cannabis cultivation, for costs of remediation.

FISH SCREENS AND CONDUITS

Linked Revenue and Expenditures

5985Owner return of surplus funds advanced for construction of conduit.

5992Owner payment of one-half of conduit maintenance costs.

GRASS CARP MANAGEMENT

Linked Revenue and Expenditures

6454Permit and inspection fees, for initial and ongoing costs of the program.

OFFSHORE OIL STRUCTURES

Linked Revenue and Expenditures

6603(e).....Gifts, subventions, grants, rebates, reimbursements, and subsidies from any lawful source, for the planning, development, maintenance, and operation of an offshore oil structure transferred to the department.

6612(b)Financial assurances from applicant to guarantee adequate funds for required activities relating to offshore oil structure.

6616(e).....Applicant payments, for overall management of offshore oil structure by the department.

SACRAMENTO-SAN JOAQUIN VALLEY WETLANDS MITIGATION BANK ACT OF 1993

Linked Revenue and Expenditures

1786Trust or bond in favor of the department that provides sufficient funds to ensure administration, protection, operation, and maintenance in perpetuity of the wetland habitat acreage and values, if the operator defaults in performing the duties.

1792.5Reimbursement of department costs.

SUCTION DREDGING

Linked Revenue and Expenditures

5653Permit fee, for regulation of suction dredging.

WATER POLLUTION

Linked Revenue and Expenditures

12016Polluter payment of actual damages and reasonable clean-up costs.