

## Memorandum 2013-30

**Fish and Game Law: Public Comment on  
Proposed Division 1 (General Provisions)**

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In prior memoranda in this study,<sup>1</sup> the staff requested public comment on a number of issues relating to the proposed Fish and Wildlife Code.

On May 23, 2013, the Commission received four letters from Kevin Hunting, Chief Deputy Director of the Department of Fish and Wildlife (the "Department"), writing on behalf of the Department. The first three of those letters are attached to this memorandum as an Exhibit. The fourth is attached to Memorandum 2013-31.

In the first letter, Mr. Hunting explains why the Department is commenting on some, but not all of the issues raised in Memorandum 2013-11, Memorandum 2013-12, and Memorandum 2013-13:

Our lack of comment on any given subject is either because we do not have a position on the matter and defer to CLRC staff on the subject, or because the matter is better suited for either Fish and Game Commission or public comment.<sup>2</sup>

The staff greatly appreciates the Department's input. Given the Department's knowledge and expertise, the staff presumes that Department comments regarding its own administration and operations are correct. That presumption can be overcome where there is good reason to do so. But in the absence of any contrary information or reasoning, it seems appropriate to rely on the Department's information and recommendations.

All statutory references in this memorandum are to the existing Fish and Game Code or to "proposed" provisions of the draft Fish and Wildlife Code.

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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](http://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 Exhibit p. 1.

## COMMENT ON MEMORANDUM 2013-11

The Department expresses its appreciation for the Commission's provisional decision to organize the proposed Fish and Wildlife Code along these general lines:<sup>3</sup>

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Freshwater Fisheries
- Division 6. Marine Fisheries
- Division 7. Wildlife Management
- Division 8. Nongame and Endangered Species
- Division 9. Planning and Environmental Review
- Division 10. Miscellaneous Provisions

**No Commission action is required in response to that comment.**

## COMMENTS ON MEMORANDUM 2013-12

The Department comments on a number of points raised in relation to specific provisions proposed in Memorandum 2013-12. Those comments are discussed individually below.

### **Restatement and Continuation**

Proposed Section 20 provides a rule of construction, making clear that any provision of the new code that is substantially the same as a former provision shall be construed as a continuation and restatement of the former provision, and not as a new provision.

The Department indicates that proposed Section 20 is "acceptable."<sup>4</sup> **No Commission action is required in response to that comment.**

### **Use of English in Department Reports**

Proposed Section 50 would continue an existing provision requiring that the Department's statements and reports be published in English. A staff note following proposed Section 50 asked whether the section should be revised to make clear that the Department may also publish documents in languages other than English, as a supplement to English publication.

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3. Minutes (April 2013), p. 11; Exhibit p. 2.

4. See Exhibit p. 3.

In response, the Department writes:

Due to a lack of staff translators, the Department supports maintaining the existing language of this section and does interpret the section as requiring that reports/statements be made in English. However, whenever possible the Department strives to provide materials to members of the public in a number of languages to increase understanding of and compliance with the Code. Such efforts will continue and expand as resources allow.<sup>5</sup>

Based on that input, it does not seem that the existing provision has been any impediment to the department translating its materials into languages other than English, as its resources permit. Given that the section has not been causing any problems, it might be best to leave it unchanged, as the Department recommends. **Does the Commission agree?**

### **Gender**

The Department supports the Commission's goal of neutralizing gendered language in the proposed code.<sup>6</sup> **No Commission action is required in response to that comment.**

### **Definitions of "Fish," "Kelp," and "Mammal"**

Memorandum 2013-12 discussed apparent problems with the definitions of the terms "fish," "kelp," and "mammal."<sup>7</sup> The definitions are broader than common usage would suggest and there are many provisions that appear to use the terms more narrowly than the defined meaning. Despite those problems, the staff recommended against making any effort, in the current study, to standardize the usage of the terms throughout the code.

The Department supports the staff's recommendation. **No Commission action is required in response to that comment.**

Respectfully submitted,

Brian Hebert  
Executive Director

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5. *Id.*

6. *Id.*

7. *Id.* See also Memorandum 2012-12, pp. 5-8.



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*EDMUND G. BROWN, Jr., Governor*  
*CHARLTON H. BONHAM, Director*



**VIA FIRST CLASS MAIL AND ELECTRONIC MAIL**

May 23, 2013

Ms. Xochitl Carrion, Chairperson  
California Law Revision Commission  
c/o Mr. Brian Hebert, Executive Director  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739

Subject: Fish and Game Code

Dear Ms. Carrion:

We have reviewed three memoranda, 2013-11, 2013-12 and 2013-13, and prepared the attached comments for your consideration. There are some proposed changes in the CLRC memos that we have not commented on. Our lack of comment on any given subject is either because we do not have a position on the matter and defer to CLRC staff on the subject, or because the matter is better suited for either Fish and Game Commission or public comment.

Thank you again for your efforts and please contact us with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Hunting".

Kevin Hunting  
Chief Deputy Director



**VIA FIRST CLASS MAIL AND ELECTRONIC MAIL**

May 23, 2013

Ms. Xochitl Carrion, Chairperson  
California Law Revision Commission  
c/o Mr. Brian Hebert, Executive Director  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739

Subject: Comments on Memorandum 2013-11

Dear Ms. Carrion:

Regarding CLRC memorandum 2013-11, the Department of Fish and Wildlife has the following comments:

**Proposed Divisions**

- **In our April 10, 2013 letter to you, the Department requested a different approach to dividing the Code, consistent with existing Code section 13201, which does not highlight the dichotomy between taking and protecting wildlife. The Department appreciates the CLRC discussion of the issue at their April 11, 2013 meeting indicating support for an alternative that would avoid the dichotomy.**

Thank you again for your efforts and please contact us with any questions.

Sincerely,

Kevin Hunting  
Chief Deputy Director



**VIA FIRST CLASS MAIL AND ELECTRONIC MAIL**

May 23, 2013

Ms. Xochitl Carrion, Chairperson  
California Law Revision Commission  
c/o Mr. Brian Hebert, Executive Director  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739

Subject: Comments on Memorandum 2013-12

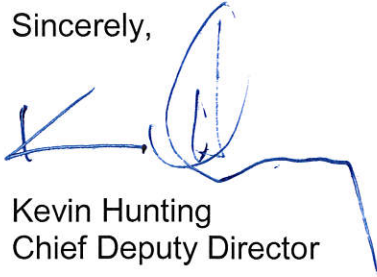
Dear Ms. Carrion:

Regarding CLRC memorandum 2013-12, the Department of Fish and Wildlife has the following comments:

- **§ 20. Restatement and continuation:** The proposed language to clarify that substantially similar code provisions between the original and modified code shall be construed as a restatement and continuation, rather than a new enactment is acceptable.
- **§ 50. Use of English in statements and reports:** Due to lack of staff translators, the Department supports maintaining the existing language of this section and does interpret the section as requiring that reports / statements be made in English. However, whenever possible, the Department strives to provide materials to members of the public in a number of languages to increase understanding of and compliance with the Code. Such efforts will continue and expand as resources allow.
- **§ 60. Gender:** As requested in our April 10, 2013 letter, any amendments the Commission can recommend to achieve greater gender neutrality in the Code would be appreciated.
- **§ 195. "Fish":** The Department acknowledges the challenges with the existing definition of fish including categories of species not commonly recognized as falling within this definition, as well as the incongruities between use of the word in the definitions section and use of the word in a more traditional sense elsewhere in the Code. However, given the prevalence of the word in the Code and the difficulties with interpreting legislative intent with regard to each of the 660 instances in which the term is used in this Code alone, we support the CLRC staff decision NOT to recommend specific changes to the definition, but instead to raise the issue in a more global way in its report to the legislature.
- **§ 215. "Kelp":** The Department supports the CLRC staff recommendation to maintain the existing definition of the term.
- **§ 220. "Mammal":** The Department supports the CLRC staff recommendation to maintain the existing definition of the term.

Thank you again for your efforts and please contact us with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KH', with a long horizontal line extending to the right and then turning down at the end.

Kevin Hunting  
Chief Deputy Director