

## Second Supplement to Memorandum 2016-25

### **Fish and Game Law: Specific Types of Animals**

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Memorandum 2016-25 presents a draft of Divisions 6 through 12 of the proposed Fish and Wildlife Code,<sup>1</sup> containing provisions of the existing Fish and Game Code governing specific types of animals.

Commissioner Boyer-Vine has provided the staff with some informal feedback on the draft. The staff appreciates the input and believes that the draft could be improved by addressing the concerns that she has raised.

The staff's proposed revisions are discussed below.

#### PROPOSED SECTION 25135

Proposed Section 25135 (which would continue existing Section 6924) includes a statutory deadline – two actions described in the section are required to be completed “within six months of the effective date of this chapter.” Commissioner Boyer-Vine suggests replacing that deadline language with a date certain.

As the effective date referenced in the provision is September 30, 1988,<sup>2</sup> **the staff recommends replacing the language quoted above with “by March 31, 1989.”**<sup>3</sup>

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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 1988 Cal. Stat. ch. 1545.

3. There is a strong likelihood that this section is obsolete, and need not be continued in the proposed law. The staff has asked for comment on that issue in a Staff Note following the section.

## STAFF NOTES

Commissioner Boyer-Vine has also identified a few staff notes that could be expressed more clearly, or further explained. The staff agrees, and recommends that the notes be revised as suggested below.

Because the proposed revisions refer to specific provisions of the draft, the revisions may be hard to follow out of context. Rather than reiterate the provisions in this supplement, the staff suggests that Commissioners read the proposed revisions together with the corresponding provisions in the draft attached to Memorandum 2016-25.

### **Proposed Sections 25460, 25760, and 30465**

Proposed Sections 25460, 25760, and 30465 are largely identical sections, each continuing provisions of existing Section 8623 that presently apply to three listed types of fish.<sup>4</sup> The proposed sections would duplicate those provisions, but each proposed section would apply to only one of the listed types of fish.

Using the first of the three sections as an example, the staff recommends that **the Staff Note following each of the proposed sections be restated as follows:**

**☞ Staff Note.** The portion of existing Fish and Game Code Section 8623(a) and (b) that applies to barracuda would be continued by proposed Section 25460(a) and (b).

Existing Section 8623 also includes a disclaimer in subdivision (e) that, by its terms, applies to all provisions of that section (“Notwithstanding the provisions of this section...”)

However, despite the broad wording of this disclaimer, the staff’s analysis suggests that the substantive portion of subdivision (e) logically applies only to subdivision (b). Proposed Section 25460(c) would state that specific application expressly.

**The staff invites comment on whether that expressly stated application would cause any problems.**

### **Proposed Section 26700**

Proposed Section 26700 would continue part of existing Section 12002.8(d).<sup>5</sup>

**The staff recommends that the Staff Note following proposed Section 26700 be restated in clearer terms, as follows:**

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4. Barracuda, white sea bass, and yellowtail.

5. In a review of proposed Section 26700 following the submission of the draft attached to Memorandum 2016-25, the staff noted that the first subdivision of that section had been assigned an incorrect designation. The staff has corrected that error.

**☞ Staff Note.** Existing Fish and Game Code Section 12002.8(d) (which would be continued by proposed Section 26700(a)) applies to a violation of any of several articles of Chapter 2 of Part 3 of Division 6 of the existing code, including what is identified as “Article 13 (commencing with Section 8495).”

Three years after the last amendment of Section 12002.8, a new Section 8494 was inserted at the beginning of that Article 13, rendering Section 12002.8(d)’s description of the article technically inaccurate.

The staff’s analysis suggests that the inaccuracy represents only a drafting omission, rather an affirmative intention to exclude Section 8494 from the application of Section 12002.8(d). Proposed Section 26700 is therefore drafted to apply to the proposed continuation of Section 8494 (which is divided into multiple proposed sections in the chapter containing Section 26700).

**The staff invites comment on whether that scope of application would cause any problems.**

### **Proposed Section 34255**

Proposed Section 34255 would continue existing Section 1068. A note following proposed Section 34255 suggests that Section 1068 may be obsolete. Commissioner Boyer-Vine suggests that the note explain why.

The staff recommends that **the Staff Note following proposed Section 34255 be supplemented to explain why the section might be obsolete, as follows:**

**☞ Staff Note.** Existing Section 1068 (which would be continued by proposed Section 34255) requires the director of the Department of Fish and Wildlife to make a specified grant, with the grant funded from revenue received pursuant to former Fish and Game Code Section 8051.1(b). Former Section 8051.1 became inoperative in 2001, and was repealed in 2002.

**The staff invites comment on whether, based on the elimination of the specified funding provision in 2001, Section 1068 is now obsolete and need not be continued in the proposed law.**

Respectfully submitted,

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