

Memorandum 2021-20

Fish and Game Law: Phase One Public Comment

In this study, the Commission¹ has been directed by the Legislature to consider revision of the Fish and Game Code in order to make technical improvements to that law, without making any significant substantive change to the effect of the law.²

In December 2018 the Commission approved a tentative recommendation that would recodify the existing Fish and Game Code in a proposed new Fish and Wildlife Code.³

After releasing the tentative recommendation, the Commission decided to divide public comment into two phases. Phase One would consist of comments on changes to the text of existing law. Phase Two would address the proposed organizational changes. **As part of the Phase One process, the Commission will prepare a draft recommendation to make textual improvements to the *existing* Fish and Game Code.**

At its March 2021 meeting, the Commission approved a methodology⁴ for analysis of the Phase One public comments, which were received from the Fish and Game Commission (FGC) and the Department of Fish and Wildlife (DFW). This memorandum follows the approved methodology.⁵

All further statutory references in this memorandum are to the existing Fish and Game Code or to the proposed Fish and Wildlife Code that is set out in the tentative recommendation.

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 2012 Cal. Stat. res. ch.108 (ACR 98 (Wagner)).

3. See Memorandum 2018-67 and its First Supplement; Minutes (Dec. 2018), p. 10.

4. See Memorandum 2021-16, pp. 2-3; Minutes (Mar. 2021), p. 4.

5. Relevant excerpts from the FGC and DFW comments are reproduced as an Exhibit to this memorandum.

CHANGES THAT SHOULD BE MADE

The following proposed changes were supported by one or both of the commenting entities, with neither opposing the change. The staff recommends that they be included in the draft recommendation that is being assembled.

This entire section of the memorandum will be treated as a consent item. Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to approve all of the changes in this section as a group.

Provisions Not Included in the Tentative Recommendation

There are a number of provisions that were not included in the proposed law, because they appear to be obsolete or otherwise superfluous and the Commission concluded that they should not be continued. For a number of those provisions, one or both of the commenting entities expressed support of the proposed deletion, with neither expressing a contrary view.

Based on that input, the staff recommends that the following provisions be included in a draft recommendation:

§ 398 (amended). Falconry

398. The base year for determining the inflationary index applied to the fee established by Section 396 shall be the 1984–85 fiscal year; ~~and the base year for determining the inflationary index to be applied to the fee established by Section 397 shall be the 1985–86 fiscal year.~~

Comment. Section 398 is amended to delete obsolete material.

§ 456 (amended). Deer management

456. The department shall biennially report to the Legislature and to the Fish and Game Commission on the progress that is being made toward the restoration and maintenance of California's deer herds. ~~The first report shall be submitted on or before October 1, 1989.~~ The report shall include program activities regarding deer habitat, particularly addressing problems dealing with identification and preservation of critical deer habitat areas; the amount of revenue derived from the sale of deer tags during the two previous fiscal years; a list of expenditures during the two previous fiscal years and proposed expenditures during the current fiscal year; and a report of general benefits accrued to the deer resources as a result of the program.

Comment. Section 456 is amended to delete obsolete material.

§ 2021 (amended). Shark fin

2021. (a) As used in this section “shark fin” means the raw, dried, or otherwise processed detached fin, or the raw, dried, or otherwise processed detached tail, of an elasmobranch.

(b) Except as otherwise provided in subdivisions (c), (d), and (e), it shall be unlawful for any person to possess, sell, offer for sale, trade, or distribute a shark fin.

(c) Any person who holds a license or permit pursuant to Section 1002 may possess a shark fin or fins consistent with that license or permit.

(d) Any person who holds a license or permit issued by the department to take or land sharks for recreational or commercial purposes may possess a shark fin or fins consistent with that license or permit.

~~(e) Before January 1, 2013, any restaurant may possess, sell, offer for sale, trade, or distribute a shark fin possessed by that restaurant, as of January 1, 2012, that is prepared for consumption.~~

Comment. Section 2021 is amended to delete obsolete material.

§ 2021.5 (amended). Shark fin

2021.5. (a) Notwithstanding Section 2021, all of the following provisions apply:

(1) Any person who holds a license or permit issued by the department to take or land sharks for recreational or commercial purposes may possess, including for purposes of consumption or taxidermy, or may donate to a person licensed or permitted pursuant to Section 1002, a shark fin or fins consistent with that license or permit.

~~(2) Before July 1, 2013, any person may possess, sell, offer for sale, trade, or distribute a shark fin possessed by that person, as of January 1, 2012.~~

~~(3) Nothing in Section 2021 prohibits the sale or possession of a shark carcass, skin, or fin for taxidermy purposes pursuant to Section 3087.~~

(b) (1) The Ocean Protection Council shall submit an annual report to the Legislature that lists any shark species that have been independently certified to meet internationally accepted standards for sustainable seafood, as defined in Section 35550 of the Public Resources Code, and adopted by the Ocean Protection Council pursuant to Section 35617 of the Public Resources Code, including chain of custody standards.

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

Comment. Section 2021.5 is amended to delete obsolete material.

§ 3270 (amended). Game bird club

3270. ~~(a)~~ In order to provide additional hunting by stocking domestically propagated game birds, and to permit the taking of game birds under conditions that will not conflict with the public interest, any person who owns or controls the hunting rights on a tract of land may apply to the department for a game bird club license authorizing the taking of game birds upon that land in accordance with the regulations of the commission for the administration, including the implementation and enforcement, of this section.

~~(b) This section shall become operative on July 1, 1995.~~

Comment. Section 3270 is amended to delete obsolete material.

§ 3702.5 (amended). Duck stamp

3702.5. The department may permit individual artists to sell a limited number of prints of duck stamp related artwork or posters.

~~This section shall become operative on July 1, 1993.~~

Comment. Section 3702.5 is amended to delete obsolete material.

§ 3704 (amended). Duck stamp fee

3704. Two dollars and twenty-five cents (\$2.25) of the amount collected by the department for each state duck stamp sold shall be allocated by the commission for the purposes of the North American Waterfowl Management Plan in those areas of Canada from which come substantial numbers of waterfowl migrating to, or through, California. These funds shall be matched with federal or private funds available for that purpose. The available balance of the funds shall be used for any project authorized pursuant to Section 3702 in California. However, any lands acquired in California with those funds shall be open to waterfowl hunting as a public shooting ground or wildlife management area.

~~This section shall become operative on July 1, 1993.~~

Comment. Section 3704 is amended to delete obsolete material.

§ 3704.5 (amended). Waterfowl projects

3704.5. Waterfowl projects authorized pursuant to Sections 3702 and 3460 are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code. With the approval of the entity in control of property affected by a project, the department may make grants to, or enter into contracts with, nonprofit organizations for the accomplishment

of those projects, or the department may reimburse the controlling entity for its costs of accomplishing the project.

~~This section shall become operative on July 1, 1993.~~

Comment. Section 3704.5 is amended to delete obsolete material.

§ 4332 (amended). Deer tag

4332. (a) Any resident of this state, 12 years of age or over, who possesses a valid hunting license, may procure one tag for the taking of one deer by one person during the current license year, upon payment of the base fee of ten dollars (\$10) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(b) Any nonresident of this state, 12 years of age or over, who possesses a valid hunting license, may procure one tag for the taking of one deer by one person during the current license year, upon payment of the base fee of one hundred dollars (\$100) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(c) If provided in regulations adopted by the commission under Section 200, any resident of this state, 12 years of age or over, who possesses a deer tag may procure one additional deer tag for the taking of one additional deer during the current license season, upon payment of the base fee of twelve dollars and fifty cents (\$12.50) for the license years beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(d) If provided in regulations adopted by the commission under Section 200, any nonresident of this state, 12 years of age or over, who possesses a deer tag may procure one additional deer tag for the taking of one additional deer during the current license season, upon payment of the base fee of one hundred dollars (\$100) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

~~(e) All revenues pursuant to this section shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.~~

Comment. Section 4332 is amended to delete duplicative material. See Section 3953(b).

§ 8625 (amended). Nets for halibut

8625. (a) Except as otherwise provided in this code, set gill nets and trammel nets with mesh size of not less than 8¹/₂ inches may be used to take California halibut.

(b) Except as provided in subdivision (c), not more than 1,500 fathoms (9,000 feet) of gill net or trammel net shall be fished in

combination each day for California halibut from any vessel in ocean waters.

(c) Not more than 1,000 fathoms (6,000 feet) of gill net or trammel net shall be fished in combination each day for California halibut from any vessel in ocean waters between a line extending due west magnetic from Point Arguello in Santa Barbara County and a line extending 172° magnetic from Rincon Point in Santa Barbara County to San Pedro Point at the east end of Santa Cruz Island in Santa Barbara County, then extending southwesterly 188° magnetic from San Pedro Point on Santa Cruz Island.

~~(d) This section shall become operative on August 15, 1989.~~

Comment. Section 8625 is amended to delete obsolete material.

§ 8626 (amended). Nets for halibut

8626. (a) Notwithstanding Section 8625, and where consistent with the determination made pursuant to subdivisions (b) and (c), the director may reduce the minimum mesh size permitted for gill and trammel nets used to take California halibut from 8¹/₂ inches to not less than 8 inches in any or all areas south of a line extending 240° magnetic from the boundary line between the Counties of Los Angeles and Ventura.

(b) If, on or before October 1, 1990, the department determines that commercial landings of California halibut taken south of the line extending 240° magnetic from the boundary line between the Counties of Los Angeles and Ventura in the period between September 1, 1989, and August 31, 1990, decline by 10 percent or more compared with landings of California halibut taken in this area during the period between September 1, 1988, and August 31, 1989, the department shall assess the impact of the 8¹/₂ inch minimum mesh size restriction on the California halibut fishery in the area described in subdivision (a). The assessment shall include, but is not limited to, an analysis of landing data, including landings of California halibut in Los Angeles, Orange, and San Diego Counties, the age and size composition of the catch, and the department's monitoring at sea of the gill and trammel net fishery.

(c) If the department determines that the 8¹/₂ inch minimum mesh size, established pursuant to Section 8625 has directly resulted in a decline of 10 percent or more in landings of California halibut south of the line extending 240° magnetic from the boundary between the Counties of Los Angeles and Ventura, the director shall hold a public hearing in the area affected to make findings and take public testimony prior to taking any action pursuant to subdivision (a).

~~(d) This section shall become operative on August 15, 1989.~~

Comment. Section 8626 is amended to delete obsolete material.

Proposed Section 4415 (Existing Section 12002)

A note following proposed Section 4415 pointed out that a particular cross-reference seemed incorrect and explained why. Both FGC and DFW commented that the cross-reference should be deleted. **The staff recommends that the following amendment be included in the draft recommendation.**

§ 12002 (amended). Specified punishments

12002. (a) Unless otherwise provided, the punishment for a violation of this code that is a misdemeanor is a fine of not more than one thousand dollars (\$1,000), imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

(b) The punishment for a violation of any of the following provisions is a fine of not more than two thousand dollars (\$2,000), imprisonment in a county jail for not more than one year, or both the fine and imprisonment:

- (1) Section 1059.
- (2) Subdivision (b) of Section 4004.
- (3) Section 4600.
- (4) Paragraph (1) or (2) of subdivision (a) of Section 5650.
- (5) A first violation of Section 8670.
- (6) Section 10500.

(7) Unless a greater punishment is otherwise provided, a violation subject to subdivision (a) of Section 12003.1.

(c) Except as specified in Sections 12001 and 12010, the punishment for violation of Section 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.

(d) (1) A license, tag, stamp, reservation, permit, or other entitlement or privilege issued pursuant to this code to a defendant who fails to appear at a court hearing for a violation of this code, or who fails to pay a fine imposed pursuant to this code, shall be immediately suspended or revoked. The license, tag, stamp, reservation, permit, or other entitlement or privilege shall not be reinstated or renewed, and no other license, tag, stamp, reservation, permit, or other entitlement or privilege shall be issued to that person pursuant to this code, until the court proceeding is completed or the fine is paid.

(2) This subdivision does not apply to any violation of Section 1052, 1059, 1170, 5650, ~~5653.9~~, 6454, 6650, or 6653.5.

Comment. Section 12002 is amended to delete an erroneous cross-reference.

Proposed Section 4470 (Existing Section 2014)

The Commission proposed three technical revisions to Section 2014, to address imperfections in its expression. As background, the full note is reproduced here:

Notes. (1) Existing Section 2014(a) authorizes a civil action for unlawful or negligent taking *or* destruction of a specified animal. However, subdivision (b), stating the measure of damages in such an action, refers only to the detriment proximately caused by the *destruction* of the animal. Proposed Section 4470 would conform subdivision (b) to subdivision (a), to address scenarios in which an animal was wrongfully taken but not destroyed.

The Commission invites comment on whether this revision is appropriate.

(2) Existing Section 2014(d) reads as follows (with emphasis added):

This section does not apply to persons or local agencies engaged in agricultural pest control, to the destruction of fish in irrigation canals or works or irrigation drainages, or to the destruction of birds or mammals killed while damaging crops *as provided by law*.

The Commission has spent time researching the question of whether the phrase “as provided by law” that appears at the end of this subdivision was meant to apply to all three exceptions listed in the subdivision, or just the last listed exception. The Commission has preliminarily concluded, based on that research, that the phrase was intended to apply only to the last listed exception. Proposed Section 4470(e) would clarify that application.

The Commission invites comment on whether this revision of Section 2014(d) is appropriate.

(3) Existing Section 2014(e) (which would be continued by proposed Section 4470(f)) refers to “civil penalties” assessed against a local agency “pursuant to Division 7 (commencing with Section 13000) of the Water Code.” The term “civil penalty” can be understood to refer to both a civil penalty (as distinguished from a criminal penalty) assessed by a *court*, as well as administrative penalties assessed by an *administrative agency*. As sections in the referenced division of the Water Code provide for assessment of “civil penalties” imposed by both a court and by an administrative agency, the reference to “civil penalties” in proposed Section 4470(f) has been revised to refer to “civil or administrative penalty.”

The Commission invites comment on whether this revision is appropriate.

DFW expressed support for making all three of those revisions. **The staff recommends that the following amendments be included in a draft recommendation.**

§ 2014 (amended). Damages

2014. (a) It is the policy of this state to conserve its natural resources and to prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or amphibia.

~~(b)~~ (b) The state may recover damages in a civil action against any person or local agency which unlawfully or negligently takes or destroys any bird, mammal, fish, reptile, or amphibian protected by the laws of this state.

~~(b)~~ (c) The measure of damages is the amount ~~which that~~ will compensate for all the detriment proximately caused by the taking or destruction of the birds, mammals, fish, reptiles, or amphibia.

~~(c)~~ (d) An action to recover damages under this section shall be brought in the name of the people of the state, in a court of competent jurisdiction in the county in which the cause of action arose. The State Water Resources Control Board shall be notified of, and may join in, any action brought under this section when the activities alleged to have caused the destruction of any bird, mammal, fish, reptile, or amphibian may involve either the unlawful discharge of pollutants into the waters of the state or other violation of Division 7 (commencing with Section 13000) of the Water Code.

~~(d)~~ (e) This section does not apply to ~~persons or local agencies engaged in agricultural pest control, to the destruction of fish in irrigation canals or works or irrigation drainages, or to the destruction of birds or mammals killed while damaging crops as provided by law.~~ any of the following:

(1) Persons or local agencies engaged in agricultural pest control.

(2) The destruction of fish in irrigation canals or works, or irrigation drainages.

(3) The lawful destruction of a bird or mammal killed while damaging crops.

~~(e)~~ (f) No damages may be recovered against a local agency pursuant to this section if civil or administrative penalties are assessed against the local agency for the same detriment pursuant to Division 7 (commencing with Section 13000) of the Water Code.

~~(f)~~ (g) Any recovery or settlement of money damages, including, but not limited to, civil penalties, arising out of any civil action filed and maintained by the Attorney General in the enforcement of this section shall be deposited by the department in the subaccounts of the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund as specified in Section 13011.

~~(g)~~ (h) For purposes of this section, "local agency" includes any city, county, city and county, district, public authority, or other political subdivision.

Comment. The second paragraph of subdivision (a) of Section 2014 is amended to designate it as subdivision (b). All of the subdivisions that follow are redesignated to reflect that change.

Newly designated subdivision (c) is amended to make clear that the measure of damages for unlawful or negligent take or destruction can include the detriment caused by taking, even if the animal is not destroyed.

Newly designated subdivision (d) is amended to eliminate an ambiguous use of the phrase “as provided by law.”

Newly designated subdivision (e) is amended to make clear that the provision applies to both judicial and administrative penalties.

“Civil Liability” Revised to “Administrative Penalty”

A note preceding proposed Section 4480 explained that references to a specified range of provisions had been revised to replace references to “civil liability” with references to “administrative penalties.” The proposed changes would eliminate possible confusion about the character of the penalties (by distinguishing them from court-imposed penalties or damages). DFW expressed approval of those changes. **The staff recommends that they be made, as set out below.**

§ 2582 (amended). Administrative penalties for specified conduct

2582. (a) The department may impose ~~civil liability~~ an administrative penalty upon any person pursuant to this chapter for any of the following acts done for profit or personal gain:

(1) Unlawfully export, import, transport, sell, possess, receive, acquire, or purchase, or unlawfully assist, conspire, or aid in the importing, exporting, transporting, sale, possession, receiving, acquisition, or purchasing of, any bird, mammal, amphibian, reptile, or fish which are taken or possessed in violation of this code or the regulations adopted pursuant to this code.

(2) Unlawfully export, import, transport, sell, possess, receive, acquire, or purchase, or unlawfully assist, conspire, or aid in the importing, exporting, transporting, sale, possession, receiving, acquisition, or purchasing of any plants, insects, or other species listed pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050)), which are taken or possessed in violation of this code or the regulations adopted pursuant to this code.

(3) Unlawfully export, import, transport, sell, possess, receive, acquire, or purchase any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish which has been taken, possessed, transported, or sold in violation of this code or the regulations adopted pursuant to this code.

(4) Unlawfully possess any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected

bird, mammal, or fish which has been taken, possessed, transported, or sold in violation of this code or any regulations adopted pursuant to this code within the maritime and territorial jurisdiction of the state or within the portions of the special maritime jurisdiction of the United States upon which the State of California exercises concurrent jurisdiction, either by statute, deputization, or by contract with the United States.

(5) Having exported, imported, transported, sold, purchased, or received any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish, unlawfully make or submit any false record, account, label, or identification thereof.

(6) Attempt to commit any unlawful act, or unlawfully attempt to commit any act, described in paragraphs (1) to (5), inclusive.

(b) The department may impose ~~civil liability~~ an administrative penalty upon any person pursuant to this chapter for unlawfully exporting, importing, possessing, receiving, or transporting in interstate commerce any container or package containing any bird, mammal, amphibian, reptile, or fish, or any endangered or threatened species, or any fully protected bird, mammal, or fish unless the container or package has previously been plainly marked, labeled, or tagged in accordance with this code and the regulations adopted pursuant to this code.

(c) The department may impose ~~civil liability~~ an administrative penalty upon any person pursuant to this chapter for any unlawful failure or refusal to maintain any records or paperwork as required by this code.

Comment. Section 2582 is amended to replace references to “civil liability” with references to “administrative penalty.” This is a nonsubstantive clarification.

§ 2583 (amended). Administrative penalties for specified conduct

2583. (a) Except as provided in subdivision (b), any person who violates this code or any regulation adopted to carry out this code, and, with the exercise of due care, should have known that the birds, mammals, amphibians, reptiles, or fish, or the endangered or threatened species, or the fully protected birds, mammals, or fish were taken, possessed, transported, imported, received, purchased, acquired, or sold in violation of, or in a manner unlawful under, this code, may be assessed ~~a civil~~ an administrative penalty. The ~~civil~~ administrative penalty imposed under this chapter by the department shall not be more than ten thousand dollars (\$10,000) for each bird, mammal, amphibian, reptile, or fish, or for each endangered or threatened species, or each fully protected bird, mammal, or fish unlawfully taken, possessed, transported, imported, received, purchased, acquired, or sold. This ~~civil~~

administrative penalty may be in addition to any other penalty, civil or criminal, provided in this code or otherwise by law.

(b) No ~~civil~~ administrative penalties shall be imposed under this chapter until the guidelines for the imposition of the penalties are adopted by the commission pursuant to Section 500.

Comment. Section 2583 is amended to replace references to a “civil penalty” with references to an “administrative penalty.” This is a nonsubstantive clarification.

§ 2584 (amended). Penalty process

2584. (a) Upon an actionable violation, the department shall consult, as to the appropriate civil or criminal remedy, with the district attorney in the jurisdiction where the violation was alleged to have occurred. Before proceeding with a civil action, the department shall seek the concurrence of the Attorney General.

(b) The director shall appoint a qualified referee or hearing board, composed of one or any combination of the following persons:

(1) A qualified hearing officer, as defined in subdivision (a) of Section 2580.

(2) A retired judge of the Superior Court who is knowledgeable in fish and wildlife law.

(3) A qualified neutral referee, appointed upon petition to the Superior Court in which the violation was alleged to have occurred.

(c) The director, after investigation of the facts and circumstances, may issue a complaint to any person on whom ~~a civil~~ an administrative penalty may be imposed pursuant to Section 2582 or 2583. The complaint shall allege the acts or failures to act that constitute a basis for ~~a civil~~ an administrative penalty and the amount of the proposed ~~civil~~ administrative penalty. The complaint shall be served by personal service or certified mail and shall inform the person so served that a hearing shall be conducted within 60 days after the person has been served, unless the person waives the right to a hearing. If the person waives the right to a hearing, the department shall issue an order setting liability in the amount proposed in the complaint. If the person has waived the right to a hearing or if the department and the person have entered into a settlement agreement, the order shall be final.

(d) Any hearing required under this section shall be conducted by a referee or hearing board according to the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise provided in this section. In making a determination, the hearing officer may consider the records of the department in the matter, the complaint, and any new facts brought to his or her attention by that person. The hearing officer shall be the sole trier of fact as to the existence of a basis for liability under

Section 2582 or 2583. The hearing officer shall make the determination of the facts of the case and shall prepare and submit the proposed decision, including recommended penalty assessment, to the director for his or her review and assistance in the penalty assessment process.

(e) The director may assess the ~~civil~~ administrative penalty, and may reduce the amount, or not impose any assessment, of ~~civil~~ administrative penalties based upon the nature, circumstances, extent, and gravity of the prohibited acts alleged, and the degree of culpability of the violator; or the director may enter into a settlement agreement with the person in the best interests of the state or confirm the amount of ~~civil~~ administrative penalties contained in the complaint. If the director reduces the amount of the ~~civil~~ administrative penalty, does not impose the ~~civil~~ administrative penalty, or enters into a settlement agreement, the director shall seek the recommendation of the hearing officer and enter into the records of the case the reasons for that action, including the hearing officer's recommendation. The decision of the director assessing the ~~civil~~ administrative penalty is final. The proposed decision is a public record and shall be served upon the person. The director may approve the proposed decision in its entirety, or the director may reduce the proposed penalty and adopt the balance of the proposed decision.

(f) Upon the final assessment of the ~~civil~~ administrative penalty, the department shall issue an order setting the amount of the ~~civil~~ administrative penalty to be imposed. An order setting ~~civil liability~~ an administrative penalty under this section becomes effective and final upon the issuance thereof, and payment shall be made within 30 days of issuance. Copies of the order shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared before the director and requested a copy. Copies of the order shall be provided to any person within 10 days of receipt of a written request from that person.

(g) Within 30 days after service of a copy of an order setting the amount of the ~~civil~~ administrative penalty, any person so served may file with the superior court a petition for a writ of mandate for review of the order. In all proceedings pursuant to this subdivision, the court shall exercise its independent judgment on the evidence in the whole record. The filing of a petition for a writ of mandate shall not stay any other civil or criminal action.

(h) The records of the case, after all appeals are final, are public records, as defined in subdivision (d) of Section 6252 of the Government Code.

Comment. Section 2584 is amended to replace references to a “civil penalty” with references to an “administrative penalty.” This is a nonsubstantive clarification

§ 2585 (amended). Forfeiture not precluded by penalty

2585. The ~~civil~~ administrative penalties imposed under this chapter are in addition to any forfeiture of equipment pursuant to Section 12157 or forfeiture of birds, mammals, amphibia, reptiles, or fish pursuant to Section 12159.

Comment. Section 2585 is amended to replace references to a “civil penalty” with references to an “administrative penalty.” This is a nonsubstantive clarification.

§ 2586 (amended). Reward

2586. (a) The director may pay a reward from any funds available for that purpose to any person who furnished information which led to an arrest, a criminal conviction, an order of assessment of ~~a civil~~ an administrative penalty, or for forfeiture of property for any violation of this code or any regulation adopted pursuant to this code. The amount of reward, if any, shall be designated by the director with the advice of the CalTIP Award Board.

(b) This chapter does not apply to any action brought to recover damages under Section 2014.

Comment. Section 2586 is amended to replace a reference to a “civil penalty” with a reference to an “administrative penalty.” This is a nonsubstantive clarification.

§ 2587 (amended). Enforcement of penalty

2587. (a) Notwithstanding Section 12511 of the Government Code, the department may retain or appoint legal counsel to prepare and prosecute civil actions under this chapter.

(b) Any action to recover ~~civil~~ administrative penalties imposed under this chapter shall be commenced within three years after discovery of the commission of the offense.

Comment. Section 2587 is amended to replace a reference to a “civil penalty” with a reference to an “administrative penalty.” This is a nonsubstantive clarification.

§ 2588 (amended). Deposit of penalties and revenue

2588. All ~~civil~~ administrative penalties and revenues from forfeitures collected pursuant to this chapter shall be deposited in the Fish and Game Preservation Fund.

Comment. Section 2588 is amended to replace a reference to a “civil penalty” with a reference to an “administrative penalty.” This is a nonsubstantive clarification

CHANGES THAT SHOULD NOT BE MADE

The following proposed changes were opposed by one or both of the commenting entities, with neither supporting the change. The staff recommends that they not be included in the proposed recommendation.

This entire section of the memorandum will be treated as a consent item. Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to decide that none of the proposed revisions described in this section should be included in the draft recommendation.

Provision Omitted from Proposed Law (Existing Section 6425)

The tentative recommendation did not continue existing Section 6425(a), because that provision appeared on its face to be obsolete. DFW concedes that the provision is technically obsolete (it prescribes funding for a program in the 1985-86 fiscal year), nonetheless they believe that its retention in the code has practical value. The staff sees no reason to dispute that contention. **The staff recommends that the deletion of Section 6425(a) not be included in the draft recommendation.**

CHANGES THAT SHOULD PRESUMPTIVELY BE MADE

The commenters did not express a clear opinion on whether the changes described below should be made. Unless further input warrants a different approach, they will be carried forward to a future memorandum and presented for approval as proposed consent items.

A couple of the items discussed below illustrate a point about the staff's methodology that is worth noting. In addition to reviewing the comments that we received from FGC and DFW (which mostly address Commission Notes), the staff is also looking at every Commission Comment in the tentative recommendation to see whether it describes a textual change that should be considered for inclusion in the draft recommendation. This will sweep in some improvements that were considered too plainly correct to justify a Note asking for comment. After FGC and DFW have had a chance to consider such changes, they will be presented for approval as consent items.

Proposed Section 3210 (Existing Section 1055.3)

In proposed Section 3210 (existing Section 1055.3), the Commission deleted apparently obsolete cross-references to former Section 1055. That change was described in the Comment, but there was no Note asking for input on its propriety. Because there was no comment on the change, it was not included as a consent item in this memorandum. **Instead, the staff recommends that it be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the restatement in a future memorandum, for approval as a consent item.**

Proposed Section 4420 (Existing Section 12020)

In proposed Section 4420 (existing Section 12020), the Commission added language to a broadly worded provision to make clear that it only applies to conduct governed by the Fish and Game Code or regulations adopted pursuant to that code. That change was described in the Comment, but there was no Note asking for input on its propriety. Because there was no comment on the change, it was not included as a consent item in this memorandum. **Instead, the staff recommends that it be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the restatement in a future memorandum, for approval as a consent item.**

Proposed Section 4492 (Existing Section 2584)

In proposed Section 4492, the Commission restated existing Section 2584(b)-(h), to make those provisions easier to understand and use. DFW commented that the restatement “will not have a substantive change in the meaning of those sections.” Because DFW did not express support for making the change, it was not included as a consent item in this memorandum. **Instead, the staff recommends that it be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the restatement in a future memorandum, for approval as a consent item.**

Respectfully submitted,

Brian Hebert
Executive Director

PHASE ONE COMMENTS

The table below sets out the Comments of the Fish and Game Commission and the Department of Fish and Wildlife that are addressed in Memorandum 2021-20.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
n/a	398		Sec. 398 clause 2 can be deleted. Obsolete.
n/a	456	The second sentence of sec. 456 makes reference to the first report being due in 1989; the report was prepared and FGC believes the reference can be deleted.	Sec. 456 second sentence can be deleted. Obsolete.
n/a	2021		Sec. 2021(e) can be deleted. Obsolete.
n/a	2021.5		Sec. 2021.5(a)(2) can be deleted. Obsolete.
n/a	3270	FGC agrees that sec. 3270(b) can be deleted as obsolete.	Sec. 3270(b) can be deleted. Obsolete.
n/a	3702.5	FGC agrees with CLRC that the second sentence in sec. 3702.5 can be deleted as obsolete.	Sec. 3702.5 second sentence can be deleted. Obsolete.
n/a	3704	FGC agrees with CLRC that the second sentence in sec. 3704.5 can be deleted as obsolete.	Sec 3704 second sentence can be deleted. Obsolete.
n/a	3704.5		Sec. 3704.5 second paragraph can be deleted. Obsolete.
n/a	4332		Sec. 4332(e) can be deleted. Superfluous based on sec. 3953(c).
n/a	6425		While it is technically accurate that sec. 6425(a) is obsolete, CDFW does not want the language deleted because it believes that having ready access to the language (e.g. it's still in the code) is valuable for the future. For example, language on how much funding was available when the program started may provide valuable historical information.
n/a	8625		Sec. 8625(d) can be repealed. Obsolete.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife
n/a	8626		Sec. 8626 can be repealed. Obsolete.
4115	853		The Note misstates existing sec. 853(c). The proposed restatement does not cause a substantive change in the meaning of the provision.
4415	12002	FGC believes that the reference to sec. 5653.9 in sec. 12002(d)(2) should be deleted.	CDFW agrees that the reference to sec. 5653.9 in sec. 12002(d)(2) can be deleted.
4464(a)	12013	Reorganization of Fish and Game Code is outside the scope of the current review; however, during consideration of any reorganization it should be noted that subdivision 12013(g) applies to subdivisions 12013(a) through (c)	CDFW agrees that the torture punishment in sec. 12013(c) can be separated from the multiple bag limit punishment in secs. 12013(a) and (b). Sec. 12013(g) should apply to both torture and bag limit punishments.
4464(b)	12013	Reorganization of Fish and Game Code is outside the scope of the current review; however, FGC agrees that the torture punishment in subdivision 12013(c) could be separated from the multiple bag limit punishment in subdivisions 12013(a) and (b) during any consideration of reorganization.	CDFW agrees that the torture punishment in sec. 12013(c) can be separated from the multiple bag limit punishment in secs. 12013(a) and (b). Sec. 12013(g) should apply to both torture and bag limit punishments.
4470	2014		Three comments: (1) CDFW agrees that the revision is appropriate because it clarifies that sec. 2014(b) applies to when an animal was wrongfully taken but not destroyed. (2) CDFW agrees that the term "as provided by law" in sec. 2014(d) only applies to the last listed exception, the damaging of crops. (3) CDFW agrees that the addition of "or administrative" is appropriate to sec. 2014(e).
4480	2580		CDFW agrees that the references in sec. 2580 et seq. to "civil liability" can be changed to "administrative penalty."
4492	2584		The restatement of secs. 2584(b)-(h) will not have a substantive change in the meaning of those sections.