

## First Supplement to Memorandum 2021-26

### **Fish and Game Law: Phase One Public Comment**

---

In this study, the Commission<sup>1</sup> 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.<sup>2</sup>

In response to that directive, in December 2018 the Commission approved and distributed a tentative recommendation that would recodify the existing Fish and Game Code in a proposed new Fish and Wildlife Code.<sup>3</sup> After releasing the tentative recommendation, the Commission decided to divide the proposed statutory revision into two phases, with “Phase One” addressing and proposing textual improvements to existing law in a draft recommendation that would revise the *existing* Fish and Game Code.<sup>4</sup>

This supplement continues analysis of public comment on “Phase One” changes proposed by the Commission, pursuant to a methodology previously approved by the Commission.<sup>5</sup> The comments analyzed have been submitted by the Fish and Game Commission (hereafter, “FCG”), and the Department of Fish and Wildlife (hereafter, “DFW”).<sup>6</sup>

Unless otherwise indicated, all statutory references in this supplement are to the existing Fish and Game Code, or to the proposed Fish and Wildlife Code as set out in the Commission’s previously distributed 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](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 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 2021-11; Minutes (Feb. 2021), p. 5. “Phase Two” would involve consideration of proposed organizational changes to the existing law.

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

6. The comments are reproduced in an Exhibit to this supplement.

## 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 the changes be provisionally approved for inclusion in the draft recommendation that is being assembled.

**This entire section of the supplement 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 provisionally approve all of the changes in this section as a group, for inclusion in the draft recommendation.

### **Proposed Section 8915 (Existing Section 2541)**

Proposed Section 8915 would restate antiquated non-standard language in existing Section 2541, as well as make two technical changes.

DFW agrees with the proposed revision of the non-standard language. FGC did not comment.

**The staff recommends that the Commission's proposed changes be included in a draft recommendation as follows:**

#### **§ 2541 (amended). Surety bond**

2541. Each applicant for a guide license shall submit proof of having obtained a surety bond in the amount of not less than one thousand dollars (\$1,000) ~~which shall insure~~ conditioned on faithful performance of the guide and ~~his or her~~ the guide's agents or employees in fulfilling their responsibilities to their clients. No guide license shall be issued to any applicant who does not submit proof of having a bond ~~which~~ that is valid for the term of the license.

**Comment.** Section 2541 is amended to delete obsolete material, and make nonsubstantive technical changes.

### **Obsolete Provisions**

In the tentative recommendation, the Commission invited comment on the discontinuation of a number of existing provisions, because the provision appeared to the Commission to be obsolete or otherwise superfluous. One or both of the commenting entities have expressed support for the proposed deletion of the provisions that follow, with neither entity expressing a contrary view.

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

**§ 3004.5 (amended). Take within California condor range**

**3004.5.** (a)(1) Nonlead centerfire rifle and pistol ammunition, as determined by the commission, shall be required when taking big game, as defined in the department's mammal hunting regulations (14 Cal. Code Regs. 350), with rifle or pistol, and when taking coyote, within the California condor range.

(2) For purposes of this section, "California condor range" means:

(A) The department's deer hunting zone A South, but excluding Santa Cruz, Alameda, Contra Costa, San Mateo, and San Joaquin Counties, areas west of Highway 101 within Santa Clara County, and areas between Highway 5 and Highway 99 within Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern Counties.

(B) Areas within deer hunting zones D7, D8, D9, D10, D11, and D13.

(3) The requirements of this subdivision shall remain in effect in the California condor range unless and until the more restrictive nonlead prohibitions required pursuant to subdivision (b) are implemented.

(b) Except as provided in subdivision (j), and as soon as is practicable as implemented by the commission pursuant to subdivision (i), but by no later than July 1, 2019, nonlead ammunition, as determined by the commission, shall be required when taking all wildlife, including game mammals, game birds, nongame birds, and nongame mammals, with any firearm.

(c)(1) The commission shall maintain, by regulation, a public process to certify ammunition as nonlead ammunition, and shall define, by regulation, nonlead ammunition as including only ammunition in which there is no lead content, excluding the presence of trace amounts of lead. The commission shall establish and annually update a list of certified ammunition.

(2) The list of certified ammunition shall include, but not be limited to, any federally approved nontoxic shotgun ammunition.

(d)(1) To the extent that funding is available, the commission shall establish a process that will provide hunters with nonlead ammunition at no or reduced charge. The process shall provide that the offer for nonlead ammunition at no or reduced charge may be redeemed through a coupon sent to a permit holder with the appropriate permit tag. If available funding is not sufficient to provide nonlead ammunition at no charge, the commission shall set the value of the reduced charge coupon at the maximum value possible through available funding, up to the average cost within

this state for nonlead ammunition, as determined by the commission.

(2) The nonlead ammunition coupon program described in paragraph (1) shall be implemented only to the extent that sufficient funding, as determined by the Department of Finance, is obtained from local, federal, public, or other nonstate sources in order to implement the program.

~~(3) If the nonlead ammunition coupon program is implemented, the commission shall issue a report on the usage and redemption rates of ammunition coupons. The report shall cover calendar years 2008, 2009, and 2012. Each report shall be issued by June of the following year.~~

~~(e) The commission shall issue a report on the levels of lead found in California condors. This report shall cover calendar years 2008, 2009, and 2012. Each report shall be issued by June of the following year.~~

~~(f)~~ (e) The department shall notify those hunters who may be affected by this section.

~~(g)~~ (f) A person who violates any provision of this section is guilty of an infraction punishable by a fine of five hundred dollars (\$500). A second or subsequent offense shall be punishable by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000).

~~(h)~~ (g) This section does not apply to government officials or their agents when carrying out a statutory duty required by law.

(i) (h) The commission shall promulgate regulations by July 1, 2015, that phase in the requirements of this section. The requirements of this section shall be fully implemented statewide by no later than July 1, 2019. If any of the requirements of this section can be implemented practicably, in whole or in part, in advance of July 1, 2019, the commission shall implement those requirements. The commission shall not reduce or eliminate any existing regulatory restrictions on the use of lead ammunition in California condor range unless or until the additional requirements for use of nonlead ammunition as required by this section are implemented.

(j) (i)(1) The prohibition in subdivision (b) shall be temporarily suspended for a specific hunting season and caliber upon a finding by the director that nonlead ammunition of a specific caliber is not commercially available from any manufacturer because of federal prohibitions relating to armor-piercing ammunition pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(2) Notwithstanding a suspension pursuant to paragraph (1), nonlead ammunition shall be used when taking big game mammals, nongame birds, or nongame mammals in the California condor range, as defined in subdivision (a).

**Comment.** Paragraph (3) of subdivision (d) of Section 3004.5, and subdivision (e) of Section 3004.5, are deleted as obsolete.

**§ 3040 (amended). Free hunting days**

**3040.** (a) Notwithstanding Section 3031, the director may designate two days per year as “Free Hunting Days.” One free hunting day may be established during the fall hunting season, and the other free hunting day may be established during the winter hunting season. The department shall publish the exact dates of the free hunting days in annual publications of the department regarding current hunting regulations.

(b) During a free hunting day, a California resident may hunt if accompanied by a hunter who holds a valid hunting license issued by the State of California, has held a valid hunting license for at least the last three consecutive years, is at least 21 years of age, and accompanies only one unlicensed hunter in the field at a time. An unlicensed hunter shall participate in the free hunting days for only one license year and shall complete a hunter education course approved by the department and register with the department, or an agent of the department, prior to participating in a free hunting day. While engaged in hunting activities, the unlicensed hunter shall remain in close visual and verbal contact with the licensed hunter at all times so that the licensed hunter is able to provide adequate direction and immediately assume control of a firearm from the unlicensed hunter at any time.

(c) An unlicensed hunter who participates in a free hunting day shall have in his or her possession all of the following:

(1) A certificate of completion of a course in hunter education as required in paragraph (3) of subdivision (a) of Section 3050.

(2) Any required tags or report cards.

(3) Any required federal entitlements.

(4) Any required entry permits.

(d) Unlicensed hunters participating in free hunting days shall not take any species that requires a draw or lottery to obtain a tag.

(e) An unlicensed hunter hunting pursuant to this section is subject to all of the limitations, restrictions, conditions, statutes, rules, and regulations applicable to the holder of a valid hunting license, except the requirement to possess a valid hunting license.

(f) The department may adopt additional minimum requirements and restrictions for a licensed hunter or unlicensed hunter participating in a free hunting day pursuant to this section.

~~(g) This section shall not be implemented until the department's Automated License Data System is fully operational for at least one year.~~

**Comment.** Subdivision (g) of Section 3040 is deleted as obsolete.

**§ 6924 (repealed). Report of determined elements of program**

~~6924. The department shall determine the initial elements of the program and transmit a report describing those elements to the Legislature and the Advisory Committee on Salmon and Steelhead Trout within six months of the effective date of this chapter.~~

**Comment.** Section 6924 is repealed as obsolete.

**Proposed Section 13100(a)(4) (Existing Section 7149.05(a)(4))**

Proposed Section 13100(a)(4) would revise a cross-reference to a repealed code section in existing Section 7149.05(a)(4) with what appeared to the Commission to be the correct cross-reference.

Both commenters agree that the revision is appropriate and should be made.

**The staff recommends that the Commission's proposed change be included in a draft recommendation as follows:**

**§ 7149.05 (amended). Sport fishing license**

7149.05. (a) A sport fishing license granting the privilege to take any fish, reptile, or amphibia anywhere in this state for purposes other than profit shall be issued to any of the following:

(1) A resident, 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of thirty-one dollars and twenty-five cents (\$31.25).

(2) A nonresident, 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of eighty-four dollars (\$84).

(3) A nonresident, 16 years of age or older for the period of 10 consecutive days beginning on the date specified on the license upon payment of the fee set forth in paragraph (1).

(4) A resident or nonresident, 16 years of age or older, for two designated days, upon payment of one-half the fee set forth in paragraph (1). Notwithstanding Section ~~1053~~ 1053.1, more than one single day license issued for different days may be issued to, or possessed by, a person at one time.

(5) A resident or nonresident, 16 years of age or older, for one designated day upon payment of a base fee of ten dollars (\$10).

(b) California sport fishing license validations shall be issued by authorized license agents in the same manner as sport fishing

licenses, and no compensation shall be paid to the authorized license agent for issuing the validations except as provided in Section 1055.1.

(c) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

(d) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

(e) The commission shall adjust the amount of the fees specified in subdivision (d), as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

**Comment.** Paragraph (4) of subdivision (a) of Section 7149.05 is amended to replace a cross-reference to a repealed code section with the appropriate cross-reference.

#### **Proposed Section 13105(e) (Existing Section 7149.2(e))**

Proposed Section 13105(e) would continue existing Section 7149.2(e), but delete references in the subdivision to two obsolete types of stamps.

Although the deletions were not asked about in a Note following proposed Section 13105, both commenters expressed the belief that the references to the obsolete stamps “can be removed.”

**The staff recommends that the Commission’s proposed change be included in a draft recommendation as follows:**

#### **§ 7149.2 (amended). Lifetime sport fishing license**

7149.2. (a) In addition to Section 7149.05, the department shall issue a lifetime sport fishing license under this section. A lifetime sport fishing license authorizes the taking of fish, amphibians, or reptiles anywhere in this state in accordance with the law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime sport fishing license is valid for a one-year period from January 1 through December 31 and may be renewed annually, regardless of any lapse of the license, at no additional cost to the licensee. A lifetime sport fishing license is not transferable. A lifetime sport fishing license does not include any special tags, stamps, or fees.

(b) A lifetime sport fishing license may be issued to residents of this state, as follows:

(1) To a person 62 years of age or over, upon payment of a base fee of three hundred sixty-five dollars (\$365).

(2) To a person 40 years of age or over and less than 62 years of age, upon payment of a base fee of five hundred forty dollars (\$540).

(3) To a person 10 years of age or over and less than 40 years of age upon payment of a base fee of six hundred dollars (\$600).

(4) To a person less than 10 years of age upon payment of a base fee of three hundred sixty-five dollars (\$365).

(c) Nothing in this section requires a person less than 16 years of age to obtain a license to take fish, amphibians, or reptiles for purposes other than profit.

(d) Nothing in this section exempts a license applicant from meeting other qualifications or requirements otherwise established by law for the privilege of sport fishing.

(e) Upon payment of a base fee of two hundred forty-five dollars (\$245), a person holding a lifetime sport fishing license shall be entitled annually to the privileges afforded to a person holding a second-rod ~~stamp~~ or validation issued pursuant to Section 7149.45, a sport fishing ocean enhancement ~~stamp~~ or validation issued pursuant to subdivision (a) of Section 6596.1, one steelhead trout report restoration card issued pursuant to Section 7380, and one salmon report card issued pursuant to regulations adopted by the commission. Lifetime privileges issued pursuant to this subdivision are not transferable.

(f) The base fees specified in this section are applicable commencing January 1, 2004, and shall be adjusted annually thereafter pursuant to Section 713.

**Comment.** Subdivision (e) of Section 7149.2 is amended to delete references to two obsolete types of stamps.

### **Proposed Section 13500 (Existing Section 7120)**

Proposed Section 13500 would continue existing Section 7120, which governs possession of fish taken pursuant to a sport fishing license. However, the proposed section would revise the section to make it also applicable to amphibians and reptiles, and those animals may also be taken pursuant to a sport fishing license.

Both commenters agree that the section could be revised as described for that reason.

**The staff recommends that the Commission's proposed change be included in a draft recommendation as follows:**

#### **§ 7120 (amended). Bag limits**

7120. It is unlawful for any person to possess more than one daily bag limit of any fish, amphibian, or reptile taken under a license issued pursuant to Article 3 (commencing with Section 7145) unless authorized by regulations adopted by the commission.



**Comment.** Section 7120 is amended to apply to amphibians and reptiles.

**Proposed Section 13705 (Existing Section 7232)**

Proposed Section 13500 would continue existing Section 7232, but would delete reference in that section to a “portion” of a fish as superfluous.<sup>7</sup>

FGC did not comment on this revision. DFW believes the reference can be deleted.

**The staff recommends that the Commission’s proposed change be included in a draft recommendation as follows:**

**§ 7232 (amended). Fish offal**

7232. (a) Notwithstanding Section 7121 any offal from a fish taken under a sport fishing license which is delivered by the license holder to a fish canner or fish processor may be processed, used, or sold by that fish canner or fish processor.

(b) Nothing in this section authorizes a holder of a sport fishing license to sell, or a fish canner or fish processor to purchase from a holder of a sport fishing license, any fish, ~~or any portion thereof~~, taken under a sport fishing license.

**Comment.** Section 7232 is amended to delete a superfluous reference to a portion of a fish. See Section 80.

The section is also amended to add subdivision designations.

**Proposed Section 14300 (Existing Section 8603)**

Proposed Section 14300 would continue existing Section 8603, which generally limits the use of certain gear. There are exceptions, which include use pursuant to specified chapters of the existing code. The proposed section would broaden those exceptions to allow use of the specified gear that is authorized anywhere in the code.

FGC believes that revision would not cause a problem and DFW agrees that the revision “should be” made.

**The staff recommends that the Commission’s proposed change be included in a draft recommendation as follows:**

**§ 8603 (amended). Prohibition against use of gear to take fish except as authorized**

8603. It is unlawful to use or operate or assist in using or operating any net, trap, line, spear, or appliance, other than in

---

7. See existing Section 80 (reference to animal generally includes part of animal).

connection with angling, in taking fish, except as ~~provided in this chapter or Chapter 4 of this part~~ authorized by this code.

**Comment.** Section 8603 is amended to provide an exception to the prohibitions of the section when a described action is otherwise authorized by the Fish and Game Code.

### **Proposed Section 14500 (Existing Section 7850)**

Proposed Section 14500 would continue existing Section 7500, which specifies the activities that generally require a commercial fishing license.

One provision of the section identifies the “persons” subject to the section in a non-standard manner, seemingly providing that non-natural “persons” may obtain commercial fishing licenses. As such licensing would conflict with other code sections, proposed Section 14500 would revise that provision of the section to make clear the section applies only to natural persons. A note following the proposed section invited comment on the proposed change.

DFW agrees that the section “should be” revised to indicate that the term “person” as used in the section includes only natural persons. FGC offered no comment on the revision.

**The staff recommends that the Commission’s proposed change be included in a draft recommendation as follows:**

#### **§ 7850 (amended). Activity requiring license**

7850. (a) Excepting persons expressly exempted under this code, no person shall use or operate, or assist in using or operating, any boat, aircraft, net, trap, line, or other appliance to take fish or amphibia for commercial purposes, and no person shall cause to be brought ashore, any fish or amphibia at any point in the state for the purpose of selling them in a fresh state or shall contribute materially to the activities on board the commercial fishing vessel, unless the person holds a commercial fishing license issued by the department.

(b) Any person not required under subdivision (a) to hold a commercial fishing license shall register his or her presence on board the commercial fishing vessel in a log maintained by the owner or operator of the vessel according to the requirements of the department.

(c) As used in this section, “person” ~~does not include persons who are less than 16 years of age, a partnership, corporation, or association~~ means a natural person 16 years of age or greater. Any person, partnership, corporation, limited liability company, or association may pay the fees for a license issued to any person.

(d) This article does not apply to the taking, transporting, or selling of live freshwater fish for bait by the holder of a live freshwater bait fish license issued pursuant to Section 8460.

**Comment.** Subdivision (c) of Section 780 is amended to clarify the definition of the term “person” as used in the section.

#### 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 these changes not be included in the proposed recommendation.

**This entire section of the supplement 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.

#### **Proposed Section 8705 (Existing Section 307)**

Proposed Section 8705 would make two changes to existing Section 307 that both entities believe would be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention by the entities.

**The staff recommends that the proposed revision of existing Section 307 in the tentative recommendation *not* be included in the draft recommendation.**

#### **Proposed Sections 10800, 10805, 10810, 10820 (Existing Section 3080(b)) and 10825 (Existing Section 3086)**

Existing Sections 3080(b) and 3086 refer in multiple instances to possession or take of a “game bird or mammal.” The proposed sections that would continue these existing sections revised these references to refer to a “game bird, game mammal, or fur-bearing mammal,” reasoning that the reference was *not* intended to include nongame or fully protected mammals.<sup>8</sup> A Note following the proposed sections invited comment on these revisions.

Both FGC and DFW agree that the provision could be clarified, but advise against attempting to do so. They both advise that changes to the provision would

---

8. Section 4150 provides that a mammal occurring naturally in California is either a game mammal, fully protected mammal, fur-bearing mammal, or nongame mammal.

risk unintended consequences and controversy. The staff sees no reason to dispute their judgment on this point.

**The staff recommends that the proposed restatement of existing Section 7121 *not* be included in the draft recommendation.**

**Proposed Section 13605 (Existing Section 7121)**

Proposed Section 13605 would restate existing Section 7121 in a manner that both entities believe would cause a significant substantive change to the meaning of the existing section. After considering the submitted comment, the staff sees no reason to dispute that contention by the entities.

**The staff recommends that the proposed restatement of existing Section 7121 *not* be included in the draft recommendation.**

**Proposed Section 14205 (Existing Section 7601)**

Proposed Section 14204 would have restated existing Section 7601, as perceived by the Commission without substantive change. However, both commenters express concern that at least one aspect of the restatement may change the meaning of the existing section.

**The staff recommends that the proposed restatement of existing Section 7601 *not* be included in the draft recommendation.**

**Proposed Section 14860 (Existing Section 7852.4)**

Proposed Section 14860 would restate existing Section 7852.4 without any perceived substantive change, in order to clarify the intended meaning of the section. However, both commenters express the view that the restatement would change that intended meaning.

**The staff recommends that the proposed restatement of existing Section 7852.4 *not* be included in the draft recommendation.**

CHANGES THAT SHOULD PRESUMPTIVELY BE MADE

The commenters did not express a clear opinion on whether the proposed changes in the tentative recommendation listed 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 consent items.

**Proposed Section 8115 (Existing Section 2003); Proposed Section 8145 (Existing Section 5500); Proposed Section 9565(c) (Existing Section 3005(d)); Proposed Section 11005 (Existing Section 4004(e)); Proposed Section 11010 (Existing Section 4004(f)); Proposed Section 11020 (Existing Section 4004(c)); Proposed Section 11155 (Existing Section 4004(d)); Proposed Section 11510 (Existing Section 5507); Proposed Section 13205 (Existing Section 7151(d)); Proposed Section 14600(a) (Existing Section 7852(a), (b)); Proposed Section 14870 (Existing Section 7856); Proposed Section 15105 (Existing Section 8400)**

Proposed Sections 8115, 8140, 9565(c), 11005, 11010, 11020, 11155, 11510, 13205, 14600(a), 14870, and 15105 would all restate existing provisions to make those provisions easier to understand and use.

One or both entities have expressed that the proposed restatements would not substantively change existing law,<sup>9</sup> but stop short of expressly supporting the making of the changes. For that reason, none of the proposed restatements have been included as consent items for approval in this memorandum.

**Instead, the staff recommends that the proposed changes be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the changes in a future memorandum, for approval as consent items.**

#### **Proposed Section 8015(c) (Existing Section 2001(c))**

Proposed Section 8015(c) would prohibit the possession of “a game bird or mammal,” except during open season for the taking of those animals. A Commission Note following Section 8015 inquired whether the quoted phrase above was intended to refer to *all* mammals, or to only game mammals.

Both entities offer, with supportive reasoning, that the reference was intended to include all mammals.<sup>10</sup>

The staff sees no reason to dispute that contention.

The staff also believes the best way to make that reading less ambiguous would be to revise the reference to expressly refer to “a game bird or *any* mammal.”

---

9. Although both entities indicate that the Commission’s proposed restatement of existing Section 4004(g) would not cause a substantive change in the meaning of the provision, both object to the part of the restatement that would delete the phrase “in accordance with this section” from a reference in the section to the killing of a trapped mammal. The proposed revision of the existing section in the draft recommendation would retain that phrase.

10. Section 54 defines “mammal” as “a wild or feral mammal or part of a wild or feral animal, but not a wild, feral, or undomesticated burro.”

**The staff recommends that this modification be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the change in a future memorandum, for approval as a consent item.**

**Proposed Section 8720 (Existing Section 308)**

Proposed Section 8720 would continue existing Section 308, the first sentence of which reads as follows (with emphasis added):

Notwithstanding any other provisions of this code, in District 22 the taking of birds, mammals, fish, amphibia, or reptiles shall be subject to regulations prescribed, from time to time, by the commission, *except that it is unlawful to take birds or mammals within one-eighth mile of any gallinaceous guzzler, if the area surrounding it is posted in the manner prescribed by the commission.*

In a Note following Section 8720, the Commission asked whether the provision italicized above was meant to apply only in existing District 22, as well as whether the take prohibited by this provision should be extended to include the take of animals other than birds and mammals.

FGC did not respond to this Note. DFW believes the italicized provision was meant to apply only in District 22, and that the prohibition against take should not be expanded.

The following revision would avoid uncertainty on the application of the rule:

Notwithstanding any other provisions of this code, in District 22 the taking of birds, mammals, fish, amphibia, or reptiles shall be subject to regulations prescribed, from time to time, by the commission, except that it is unlawful in District 22 to take birds or mammals within one-eighth mile of any gallinaceous guzzler, if the area surrounding it is posted in the manner prescribed by the commission.

**Although consistent with DFW's construction of the section, neither entity has seen that language before. The staff therefore recommends that the revision above be treated as presumptively correct. Unless an objection is raised by the commenters, the staff will include the revision in a future memorandum, for approval as a consent item.**

**Proposed Section 10400(b) (Existing Section 3049) and Proposed Section 10405(a) and (b) (Existing Section 3051(a) and (c))**

Proposed Section 10400(b) would continue the second paragraph of existing Section 3049, a legislative declaration that individuals who engage in hunting should possess an adequate understanding of “sportsmanship.” Proposed Section 10405(a) and (c) would continue existing Section 3051(a) and (c), which refer to the term “sportsmanship” in a similar context.

Notes in the tentative recommendation following Sections 10400 and 10405 invited comment on whether an equivalent gender-neutral term could be substituted in each of these provisions for the term “sportsmanship.”

Both entities offer “positive sporting behavior” as an appropriate substitute term relating to existing Section 3049. DFW also did so with regard to the use of the term in Section 3051(a).

Because the commenting entities did not offer an opinion on every use of the term “sportsmanship” in the proposed sections, **the staff recommends that this item be presented again in a future memorandum as a proposed consent item, with the proposed language set out for consideration.**

FURTHER INPUT REQUIRED

The staff believes that further information is required before resolving the treatment of the proposed changes described below. The staff will work with the commenters informally to assess how much time is needed to provide the necessary information. Once that information has been received, the issue will be presented to the Commission for decision.

**Proposed Section 8715 (Existing Section 315.3)**

Proposed Section 8715 would correct an obsolete cross-reference in existing Section 315.3.

DFW supports the proposed correction. FGC does not.

**The staff will confer with the two entities and bring this issue back for Commission consideration once we have more information.**

**Proposed Section 9560(a) (Existing Section 2007)**

Proposed Section 9560(a) would continue the first sentence of existing Section 2007, which reads: “It is unlawful to set, cause to be set, or placed any trap gun.”

A Commission Note following Section 9560 suggested that the meaning of the word “placed” in that sentence is unclear.

DFW agrees, and proposes that to make the sentence more clear, it should read “It is unlawful to set, place, or cause to be set or placed any trap gun.” FGC did not respond to this comment.

**The staff recommends that it discuss proposed revised language with both entities, and report back to the Commission with another staff recommendation on the matter later in this study.**

#### **Proposed Section 10700(a) (Existing Section 1575(a))**

Proposed Section 10700(a) would continue existing Section 1575(a), a portion of which provides that “Cooperative deer and elk hunting areas shall be at least 5,000 acres in size, including the open, restricted, and portions thereof,....”

A Note following the proposed section invited comment on the meaning of the phrase “including the open, restricted, and portions thereof.”

DFW agrees the phrase is unclear, and offers its belief as to what the phrase means, but does not agree to or propose any revision. FGC did not comment on this Note.

**The staff recommends that it discuss possible revised language with both entities, and report back to the Commission with another staff recommendation on the matter later in this study.**

#### **Proposed Section 11220 (Existing Section 4007)**

Proposed Section 11220 would restate existing Section 4007 as it read at the time the tentative recommendation was issued, without substantive change. A Note following Section 11220 inquired as to the appropriateness of the restatement.

Both FGC and DFW indicate that the proposed restatement would not cause any substantive change in the meaning of the provision. However, as the text of Section 4007 was amended after issuance of the tentative recommendation, the Commission’s proposed restatement of the section will need minor adjustment.

**The staff recommends that it discuss possible revised language with both entities, and report back to the Commission with another staff recommendation on the matter later in this study.**



**Proposed Section 12955(b) (Existing Section 7180.1(b)); Proposed Section 12960(a) (Existing Section 7181.1(a)); Proposed Section 13405(a) (Existing Section 7182.1(a)); Proposed Section 13405(b) (Existing Section 7185)**

Proposed Sections 12955(b), 12960(a), 13405(a) and 13405(b) would all continue existing provisions that refer to a “Colorado special use validation” or “California Colorado River special use validation.” As the Commission had been informed that these special use validations no longer existed as of the issuance of the tentative recommendation, a Note following each of the proposed sections invited comment on how the provisions containing those references should be treated in the proposed law.

FGC did not comment on any of the Notes. DFW indicated that a repeal of some or all of the provisions as obsolete might be appropriate, “[s]hould CLRC address the 2013 AZ-CA Compact.”

**As the staff is unsure of the meaning of DFW’s caveat, it recommends that it further discuss these revisions with both entities, and report back to the Commission with another staff recommendation on the matter later in this study.**

**Proposed Section 13100(a)(4) (Existing Section 7149.05(a)(4))**

Proposed Section 13100(a) would continue existing Section 7149.05(a), which specifies the fees for various sport fishing licenses. In commenting on an issue raised in a Note (correcting an obsolete cross-reference, as discussed above), FGC raised a new issue that had not been discussed in the Note.

FGC suggests that language in existing Section 7149.05(a)(4) should also be added to paragraphs (3) and (5) of that subdivision. **The staff sees merit in the suggestion and will discuss it further with both entities before making a staff recommendation on the issue later in this study.**

**Proposed Section 14615 (Existing Section 7850(c))**

Proposed Section 14615 would continue the second sentence of existing Section 7850(c), which provides that any person or business entity can pay the fees for another person’s commercial fishing *license*. However, the proposed section would generalize that provision to apply to any commercial fishing *entitlement* issued to another person (such as a stamp, permit, or enhancement validation).

FGC has offered no comment on this proposed change. DFW agrees that the application of the provision could be extended as indicated.

However, incorporation of this textual change in the existing law will be less than straightforward. While in the proposed law the second sentence of Section 7850(c) would have been a standalone provision, in the existing law it appears in a code section containing multiple references to a commercial fishing license. Changing the reference in only one such provision within the section could either be confusing or create some unintended inference.

**The staff recommends that it discuss this issue further with both entities, and report back to the Commission with another staff recommendation on the matter later in this study.**

#### **Proposed Section 15060 (Existing Section 7892)**

Proposed Section 15060 would continue the third sentence of existing Section 7892, stating that the registration fee for a commercial aircraft shall be “two hundred dollars (\$200).” However, unlike most other license or registration fee provisions throughout the code, the provision does not expressly provide for this fee to be adjusted pursuant to existing Section 713, in accordance with a price deflator published by the United States Department of Commerce.

In a Note following proposed Section 15060, the Commission inquired whether adjustment pursuant to Section 713 was nevertheless understood to be applicable to the specified fee in existing Section 7892.

Both entities indicated that the adjustment was understood to be applicable to the fee, despite the absence of statutory language providing for that adjustment.

**If that is the case, the staff sees no reason why statutory language providing for the adjustment should not be stated in the section. The staff recommends that it discuss the issue further with both entities, and report back to the Commission with another staff recommendation on the matter later in this study.**

#### **Proposed Section 15100 (Existing Section 8398)**

Proposed Section 15100 would continue existing Section 8398, which generally prohibits commercial fishing in a specified geographic area, but excepts from the prohibition “the taking of oysters by persons licensed under Article 4 (commencing with Section 6480), Chapter 5, Part 1, Division 6, from their allotted areas.”

In a Note following proposed Section 15100, the Commission noted that the Article 4 referenced in the section had been repealed in 1971, and not clearly

continued elsewhere in the code. The Commission then invited comment on how to properly continue this cross-reference in Section 8398.

Both entities responded, indicating that the cross-reference should be changed to refer to existing Section 15400, which relates to the leasing of state water bottoms. However, as Section 15400 is only the lead section in a chapter relating to the leasing of state water bottoms, and doesn't expressly refer to any type of license, the staff is unclear what precise statutory revision is being proposed by the two entities.

**The staff recommends that it discuss this issue further with both entities, and report back to the Commission with another staff recommendation on the matter later in this study.**

#### NO FURTHER ACTION RECOMMENDED

This part of the supplement addresses proposed changes for which the staff has concluded, after considering public comment on the change, that there is not sufficient evidence of a problem to justify making the proposed change.

**This entire section of this supplement 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 the staff's recommendation that the matters discussed below be set aside without further action being taken.

#### **Proposed Section 11200(a), (b)(1) (Existing Section 4005(a))**

Proposed Section 11200(a) and (b)(1) of the tentative recommendation would have restated existing Section 4005(a) as it read at the time of the tentative recommendation, without substantive change. However, since the tentative recommendation was circulated, the text of Section 4005(a) has been substantially revised by the Legislature, making the Commission's proposed restatement of the provision unnecessary and inapposite.

#### PURELY INFORMATIONAL MATTERS

The tentative recommendation included explanatory Notes relating to the provisions listed below, or inquiring about a possible revision of a provision but not proposing any change. Where there was no response to these Notes, or the

response indicates the absence of any need for reform, those issues will not be discussed further (unless a Commissioner raises an issue).

For completeness, provisions that fall into this category are listed below.

- **Proposed Section 8015(b) (Existing Section 2001(b))**
- **Proposed Section 8125 (Existing Section 2005)**
- **Proposed Section 8140 (Existing Section 3003.2)**
- **Proposed Section 9550 (Existing Section 3002)**
- **Proposed Section 9580 (Existing Section 2016)**
- **Proposed Section 10210 (Existing Section 3031)**
- **Proposed Section 10500(b) (Existing Section 330)**
- **Proposed Section 11005 (Existing Section 4004(f))**
- **Proposed Section 11100 (Existing Section 3003.1(d))**
- **Proposed Section 11110 (Existing Section 3003.1(a)-(c))**
- **Proposed Section 11150 (Existing Section 4004(a))**
- **Proposed Section 11205 (Existing Section 4005(d))**
- **Proposed Section 11500 (Existing Section 5523)**
- **Proposed Section 12610 (Existing Section 7090(b)(2))**
- **Proposed Section 12640 (Existing Section 7090(h))**
- **Proposed Section 12910 (Existing Section 6596.1(a))**
- **Proposed Section 13210 (Existing Section 7151(e))**
- **Proposed Section 13215 (Existing Section 7151(g))**
- **Proposed Section 13255 (Existing Section 6596.1)**
- **Proposed Section 13600 (Existing Section 7121)**
- **Proposed Section 14200 (Existing Section 7700(d))**
- **Proposed Section 14620 (Existing Section 6596.1)**
- **Proposed Section 14650 (Existing Section 7857(n))**
- **Proposed Section 15200 (Existing Section 1100)**
- **Proposed Section 15225 (Existing Section 8667)**
- **Proposed Section 15230 (Existing Section 8668)**
- **Proposed Section 15235 (Existing Section 8669)**

Respectfully submitted,

Steve Cohen  
Staff Counsel

## 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 the first supplement to Memorandum 2021-26.

| Proposed Section | Existing Section | Fish and Game Commission  | Department of Fish and Wildlife   |
|------------------|------------------|---|---|
| 8015             | 2001             | <p>(1) The language in the CLRC note is not the current language of sec. 2001(b); the proposed language mirrors very closely the existing language that was clarified by CLRC in 2015.</p> <p>(2) FGC believes that the word “game” is only meant to modify birds in subdivision (c).</p> <p>(3) FGC believes that subdivision (c) applies only to game birds and mammals (not modified by "game") because it relates to possession of those animals, specifically, after the closed season. Subdivision (a) relates to “take” and, accordingly, FGC believes it applies to all animals (which are all listed) as a general rule with seasons established pursuant to regulation. Subdivision (b) is limited to possession of fish, reptiles, and amphibians which have a shorter period of possession after a closed season. Finally, FGC believes subdivision (c) includes mammals (all) and game birds (solely). There is no allowed possession or season for nongame birds (i.e. raptors and other species); accordingly the possession only applies to game birds. Mammals are different because they are divided into multiple categories (small game, big game, nongame, furbearers) where possession is regulated differently, and is not just limited to game mammals. Finally, FGC notes that sec. 2001(c) references Fish and Game Code sec. 3080(d) which, in turn, does not authorize the possession of a game bird in cases where it contradicts regulations adopted by the U.S. Fish and Wildlife Service pursuant to the federal Migratory Bird Treaty Act.</p> | <p>Two comments: (1) The language in the CLRC Note is not the current language of sec. 2001(b); the proposed language mirrors very closely the existing language that was clarified by CLRC in 2015.</p> <p>(2)(a)The word “game” is only meant to modify birds in subdivision (c).</p> <p>(2)(b) Subdivision (c) applies only to game birds and mammals (not modified by "game") because it relates to possession of those animals, specifically, after the closed season. Subdivision (a) relates to “take,” accordingly it applies to all animals (which are all listed) as a general rule with seasons established pursuant to regulation. Subdivision (b) is limited to possession of fish, reptiles, and amphibians which have a shorter period of possession after a closed season. Finally, subdivision (c) includes mammals (all of them) and game birds (solely). There is no allowed possession or season for nongame birds (i.e. raptors and other species), accordingly the possession only applies to game birds. Mammals are different because Title 14 divides mammals into multiple categories (small game, big game, nongame, furbearers) and possession of them all is regulated differently, and is not just limited to game mammals.</p> |
| 8115             | 2003             | <p>FGC believes that the proposed restatement of sec. 5500 would not cause a substantive change in the meaning of that section.</p>   | <p>The restatement of sec. 2003 will not have a substantive change in the meaning of that section.</p>  |
| 8125             | 2005             | <p>No comment</p>   | <p>Two comments. (1) Assuming the reference in the Note to sec. 2005(d)(3) should be to secs. 2005(d)(7) and (8), CDFW is unaware if there was an intention to exclude tenants. CDFW does</p>   |

| Proposed Section | Existing Section | Fish and Game Commission   | Department of Fish and Wildlife   |
|------------------|------------------|--|---|
|                  |                  |  | <p>not support changing the language in 2005 to "persons who own or control" because of the difficulty of disproving someone who claims to "control" property. CDFW acknowledges that Title 14, sec. 265.4 carves out a narrow qualification of this exception for certain "tenants" but CDFW does not want to expand the use of that term.</p> <p>(2) CDFW is not commenting on changing the language in 2005(d)(3) dealing with depredation because it is not addressing the reorganization of the code at this time.</p> |
| 8140             | 3003.2           | No comment   | Note is informational only. CDFW has no comment on the Commission's authority to recodify a statute enacted by initiative.  |
| 8145             | 5500             | FGC believes that the proposed restatement of sec. 5500 would not cause a substantive change in the meaning of that section.   | The proposed restatement of sec. 5500 would not cause a substantive change in the meaning of the provision.   |
| 8705             | 307              | <p>(1) FGC believes the CLRC proposed text is a significant substantive change as Fish and Game Code sec. 307 does not apply only to "game" animals. In addition, California does not have game amphibians or game reptiles, so reference to them is also significant substantive change (as are the proposed definitions in secs. 445 and 465); see the 2018 comment letter from FGC.(2) Sec. 300 was repealed in 2016; therefore, FGC believes the filing requirement in Sec. 307 is not redundant and should not be deleted.(3) FGC believes the "legal notice" clause in existing sec. 307(b) cannot be deleted; pursuant to the California Administrative Procedure Act, a legal notice is different from, and must generally precede, adoption of regulations by an agency and, hence, filing with the Secretary of State.</p> | <p>Three comments: (1) CDFW does not support the proposed revisions because there are no game amphibians or game reptiles.</p> <p>(2) The filing requirement in sec. 307 cannot be deleted based on sec. 300. Sec. 300 was repealed.</p> <p>(3) The language in sec. 307 regarding "legal notice" cannot be repealed because legal notice is different from "proper promulgation" and "judicial notice" referenced in the APA.</p>  |
| 8715             | 315.3            | FGC believes the proposed change creates a connection that does not currently exist between sec. 315.3 (that was adopted in 1981) and rulemaking procedures later defined in sec. 255 (adopted in 2016). The original reference to specific commission meetings in sec. 209 was repealed in 2006 and replaced with sec. 206, which was then repealed and renumbered as sec. 110, effective January 2017. FGC believes sec. 110 is the appropriate reference.   | CDFW supports the substitution of sec. 209 which has been repealed with sec. 255.   |

| Proposed Section | Existing Section | Fish and Game Commission  | Department of Fish and Wildlife  |
|------------------|------------------|---|--|
| 8720             | 308              | No comment  | Two comments: (1) Yes. CDFW believes the prohibitions in sec. 308 were meant to apply only in District 22.<br>(2) CDFW believes that it would be a significant substantive change to extend the prohibitions in sec. 308 to animals other than birds and mammals because it is potentially controversial.  |
| 8915             | 2541             | No comment  | CDFW agrees with the revision to change sec. 2541's language from "which shall insure" to "conditioned on".  |
| 9550             | 3002             | FGC believes extending the prohibition from shooting from specified vehicles anything other than game birds and mammals is a significant substantive change; the proposed change is potentially controversial, requiring public dialogue before considering.  | CDFW believes it would be a significant substantive change to extend the protections from shooting from specified vehicles beyond game birds and mammals because it is potentially controversial.  |
| 9560             | 2007             | No comment  | Two comments: (1) Setting a trap gun is different from placing it. Setting the gun means making it able to fire, while placing it means putting it in a specific place. As a result, the word "place" cannot be removed.<br>(2) CDFW agrees that to make sec. 2007 more clear, it should read "It is unlawful to set, place, or cause to be set or placed any trap gun."   |
| 9565             | 3005             | CLRC note (1): No comment. CLRC note (2): FGC believes that the proposed restatement of 3005(d) does not cause a substantive change. CLRC note (3): In Fish and Game Code there is a clear distinction between possession and taking. FGC believes that adding "possession" to the exemption would be a substantive expansion of the code that potentially would be controversial and, therefore, a significant substantive change. | Three comments: (1) CDFW has no comment on this Note because it relates to a reorganization of the code which CDFW is not addressing at this time.<br>(2) CDFW agrees that the proposed restatement of sec. 3005(d) does not cause a substantive change.<br>(3) CDFW does not know if the distinction is intentional but there is a clear one between possession and taking. However, adding "possession" to the exemption would be significant substantive change to the code because of potential controversy. |
| 9580             | 2016             | No comment  | CDFW believes that it would be a significant substantive change to the code to expand sec. 2016 to prohibit the taking of reptiles and amphibians because of potential controversy.  |
| 10015            | 3004.5(d)        | FGC agrees that sec. 3004.5(d)(3) can be deleted as obsolete.   | Sec 3004.5(d)(3) can be deleted. Obsolete.   |
| 10020            | 3004.5(e)        | FGC agrees that sec. 3004.5(e) can be deleted as obsolete.  | Sec 3004.5(e) can be deleted. Obsolete.  |
| 10210            | 3031             | No comment  | This Note is informational only. No comment.   |

| Proposed Section | Existing Section | Fish and Game Commission  | Department of Fish and Wildlife  |
|------------------|------------------|---|--|
| 10230            | 3040             | No comment  | Sec 3040(g) can be deleted. Obsolete.  |
| 10400            | 3049             | FGC notes that sec. 3049, second paragraph, uses the term "sportsmanship". Gender neutral alternatives could include positive sporting behavior, sporting conduct, sporting ethics, and ethical sporting behavior/conduct.  | Sec. 3049 second paragraph uses the term "sportsmanship". A gender neutral alternative to that is "positive sporting behavior".  |
| 10405            | 3051             | FGC notes that sec. 3049, second paragraph, uses the term "sportsmanship". Gender neutral alternatives could include positive sporting behavior, sporting conduct, sporting ethics, and ethical sporting behavior/conduct.  | Sec. 3051(a) uses the term "sportsmanship". A gender neutral alternative to that is "positive sporting behavior".  |
| 10500            | 325              | (1) FGC believes that no amendment is currently necessary; Section 330 contains the correct reference to cooperative hunting areas as governed by Section 1575.(2) Reorganization of the Fish and Game Code is outside the scope of this review; however, if changed as proposed, the reference should be to Section 10700. | CDFW believes no amendment is needed because sec. 330 already contains the correct reference to cooperative hunting areas governed by sec. 1575.   |
| 10700            | 1575             | No comment  | CDFW agrees that the language of sec. 1575(a) "including the open, restricted, and portions thereof" is unclear. CDFW believes that it means that within the 5000 acre cooperative hunting areas there can be some areas that are open, some are restricted, and some that are both. |
| 10800            | 3080(a)          | FGC believes that sec. 3080(a) could be further clarified, but determining the appropriate modifiers may be controversial and is therefore a significant substantive change.  | CDFW agrees that sec. 3080(a) could be clarified to cover "game mammals" but disagrees that it should include "fur-bearing mammals". This expansion would be a significant substantive change to the code because of potential controversy.  |
| 10805            | 3080(b)          | FGC believes that sec. 3080(b) could be further clarified, but determining the appropriate modifiers may be controversial and is therefore a significant substantive change.  | CDFW agrees that sec. 3080(b) could be clarified to cover "game mammals" but disagrees that it should include "fur-bearing mammals". This expansion would be a significant substantive change to the code because of potential controversy.  |
| 10810            | 3080(c)          | FGC believes that sec. 3080(c) could be further clarified, but determining the appropriate modifiers may be controversial and is therefore a significant substantive change.  | CDFW agrees that sec. 3080(c) could be clarified to cover "game mammals" but disagrees that it should include "fur-bearing mammals". This expansion would be a significant substantive change to the code because of potential controversy.  |



| Proposed Section | Existing Section | Fish and Game Commission   | Department of Fish and Wildlife  |
|------------------|------------------|--|--|
| 10820            | 3080(e)          | FGC believes that sec. 3080(e) could be further clarified, but determining the appropriate modifiers may be controversial and is therefore a significant substantive change.   | CDFW agrees that sec. 3080(e) could be clarified to cover "game mammals" but disagrees that it should include "fur-bearing mammals". This expansion would be a significant substantive change to the code because of potential controversy.  |
| 10825            | 3086             | FGC believes that sec. 3086 could be further clarified, but determining the appropriate modifiers may be controversial and is therefore a significant substantive change.  | CDFW agrees that sec. 3086 could be clarified to cover "game mammals" but disagrees that it should include "fur-bearing mammals". This expansion would be a significant substantive change to the code because of potential controversy. Also, CLRC should consider whether AB 273 (2019) banning recreational and commercial fur trapping would impact its proposal to add "furbearers" to this section.  |
| 11005            | 4004(f)          | FGC believes that the proposed restatement to sec. 4004(f) would not cause any substantive change in the meaning of the provision. CLRC's proposal to relocate subdivisions within sec. 4004 is outside the scope of the current review. FGC also notes that sec. 4004 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020, after CLRC's tentative recommendation.  | The change proposed to sec. 4004(f) would not cause any substantive change in the meaning of the provision. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020.  |
| 11010            | 4004(g)          | CLRC's proposal to relocate subdivisions within sec. 4004 is outside the scope of the current review. FGC also notes that sec. 4004 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020, after CLRC's tentative recommendation. CLRC note (1): FGC believes that the proposed restatement to sec. 4004(g) would not cause any substantive change in the meaning of the provision. CLRC note (2): FGC believes that removing "in accordance with this section" potentially would be controversial since it could expand the application of the subdivision, which would be a significant substantive change. CLRC note (3): FGC believes that changing "mammal" to animal" potentially would be controversial since it would expand the application of the subdivision, which would be a significant substantive change. | Three comments: (1) The restatement of former sec. 4004(g) does not cause a substantive change in the meaning of that section. (2) CDFW does not support deletion of "in accordance with this section" because it wants to make it clear that sec. 4004 deals with fur-bearer trapping, not the trapping of other rodents and home trapping. (3) Changing the term "mammal" to "animal" is a substantive expansion of the application of this section and is significant because of potential controversy. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020. |
| 11020            | 4004(c)          | FGC believes that the proposed restatement to sec. 4004(c) would not cause any substantive change in the meaning of the provision. CLRC's  | The restatement of sec. 4004(c) does not cause a substantive change in the meaning of the provision. The Commission should also be aware that  |

| Proposed Section | Existing Section | Fish and Game Commission   | Department of Fish and Wildlife   |
|------------------|------------------|--|---|
|                  |                  | proposal to relocate subdivisions within sec. 4004 is outside the scope of the current review. FGC also notes that sec. 4004 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020, after CLRC's tentative recommendation.  | this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020.  |
| 11100            | 3003.1(d)        | FGC notes that sec. 3003.1 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020. While the amendment was not major, it was after CLRC's tentative recommendation.  | Note is informational only. CDFW has no comment on the Commission's authority to recodify a statute enacted by initiative. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020.  |
| 11110            | 3003.1(a)-(c)    | FGC notes that sec. 3003.1 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020. While the amendment was not major, it was after CLRC's tentative recommendation.  | Note is informational only. CDFW has no comment on the Commission's authority to recodify a statute enacted by initiative. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020.  |
| 11150            | 4004(a)          | CLRC's proposal to relocate subdivisions within sec. 4004 is outside the scope of the current review. However, FGC notes that sec. 4004 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020, after CLRC's tentative recommendation.   | CDFW is not commenting on the relocation of the section because it is beyond the scope of its review at this time. CDFW is not addressing the overall recodification of the code. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020.   |
| 11155            | 4004(e)          | FGC believes that the proposed restatement to sec. 4004(e) would not cause any substantive change in the meaning of the provision. CLRC's proposal to relocate subdivisions within sec. 4004 is outside the scope of the current review. FGC also notes that sec. 4004 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020, after CLRC's tentative recommendation.  | The restatement of sec. 4004(e) does not cause a substantive change in the meaning of the provision. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020.  |
| 11200            | 4005             | FGC notes that sec. 4005 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020, after CLRC's tentative recommendation. CLRC Note (1): FGC believes the restatement does not cause a substantive change in the meaning of the provision. CLRC note (2): "Designated by the commission" means that even if, for example, sec. 4000 lists certain species as fur bearers, their take can be prohibited or authorized by the commission. CLRC note (3): CLRC's proposal to relocate sec. 4005(b) to a definitions section is outside the scope of the current review. | Three comments. (1) The restatement of sec. 4005(a) does not cause a substantive change in the meaning of the provision. (2) "Designated by the Commission" means that even though, for example, sec. 4000 lists certain species as fur bearers, their take can be prohibited or authorized by the Fish and Game Commission. See e.g. Title 14 sec. 460. (3) CDFW is not commenting on moving the definition of "raw fur" from sec. 4005(b) to the definition sections of the existing code at this time. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020. |

| Proposed Section | Existing Section | Fish and Game Commission  | Department of Fish and Wildlife   |
|------------------|------------------|---|---|
| 11205            | 4005(d)          | FGC notes that sec. 4005 was amended by AB 273, Statutes of 2019, Chapter 216, effective 01/01/2020, after CLRC's tentative recommendation. FGC believes that existing sec. 4005(d) prohibits the sale of raw furs by all persons; changing it to refer to sec. 4005(c) would narrow the scope of the prohibition without any plain benefit and, therefore, would be a significant substantive change.  | Sec. 4005(d) prohibits the sale of raw furs by all persons providing trapping services for profit not just those described in sec. 4005(c). The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020.   |
| 11220            | 4007             | CLRC note (1): FGC believes that the restatement of sec. 4007 as captured in 11220(a) does not cause any substantive change in the meaning of the provision. CLRC note (2): FGC notes that the sale portion of sec. 4007 has been repealed by AB 273 (Statutes of 2019, Chapter 216).   | Two comments: (1) The restatement would not cause any substantive change in the meaning of the provision. The Commission should also be aware that this section was amended by Stats. 2019, Ch. 216 (AB 273), effective Jan. 1, 2020. (2) The sale portion of sec. 4007 has been repealed by AB 273.  |
| 11500            |                  | No comment  | Note is informational only. No comment.   |
| 11510            | 5507             | FGC believes that the proposed restatement of sec. 5507 would not cause a substantive change in the meaning of that section.  | The restatement does not cause a substantive change in the meaning of the section.  |
| 11835            | 6924             | No comment  | Sec. 6924 can be repealed. Obsolete   |
| 12610            | 7090(b)(2)       | FGC believes that the definition of "emerging fishery" in sec. 7090(b)(2) is not obsolete and should be continued with the existing language. Removing the date limitation would modify FGC's regulatory authority by expanding the number of fisheries that fit within the definition of "established fishery," thereby removing some fisheries from the definition of "emerging fishery" and preventing FGC from regulating those fisheries as described in Fish and Game Code sec. 7090. | The definition of "emerging fishery" in sec. 7090(b)(2) is not obsolete and should be continued with the current language. Removing the date limitation would modify the Fish and Game Commission's regulatory authority. By expanding the number of fisheries that fit within the definition of "established fishery," it could remove fisheries from the definition of "emerging fishery" and therefore prevent the Fish and Game Commission from regulating those fisheries as described in sec. 7090. |
| 12640            | 7090(h)          | No comment  | Note is informational only. No comment.   |
| 12910            | 6596.1(a)        | FGC agrees that this portion of sec. 6596.1(a) only applies to "a person sport fishing," and, therefore, has no application to aquaculture business activities. FGC believes the change described in CLRC's note would have no practical effect. Reorganization of the Fish and Game Code is outside the scope of the current review.   | CDFW agrees that this portion of sec. 6596.1(a) only applies to "a person sport fishing," and is therefore, by its terms, inapplicable to aquaculture business activities. CDFW is not addressing the impact of the relocation of this section at this time.  |
| 12955            | 7180.1           | No comment  | Should CLRC address the 2013 AZ-CA Compact, sec. 7180.1(b) can be repealed. Obsolete.   |

| Proposed Section | Existing Section | Fish and Game Commission  | Department of Fish and Wildlife   |
|------------------|------------------|---|---|
| 12960            | 7181.1           | No comment  | Should CLRC address the 2013 AZ-CA Compact, sec. 7181.1(a), second sentence, can be repealed. Obsolete.   |
| 13100            | 7149.05          | FGC believes that the cross-reference in sec. 7149.05(a)(4) should be changed to sec. 1053.1. FGC also believes that the second sentence of subdivision (a)(4) should be added to subdivisions (3) and (5) because the sentence is applicable to all three subdivisions and needs to be carried over in each.   | CDFW agrees that the cross reference in sec. 7149.05(a)(4) should be changed from sec. 1053 to sec. 1053.1.   |
| 13105            | 7149.2           | FGC believes that references in sec. 7149.2 to stamps can be removed as obsolete. FGC also notes that proposed subdivision (a) of sec. 13105, Fish and Wildlife Code, should start with "In addition to Section 13100," which is about annual licenses, instead of sec. 12850, which states a license authorizes sport fishing anywhere in the state; however, a complete analysis of the proposed change is outside the scope of the current review. | No Note. Comment only. CDFW agrees that the two references to "stamps" in sec. 7149.2(e) can be removed. Obsolete.  |
| 13205            | 7151(d)          | No comment  | CDFW agrees that the proposed change clarifies sec. 7151(d) without changing its substantive effect. However, there is a typo in subsection e--"that that" should be "that".  |
| 13210            | 7151(e)          | No comment  | The legislature elected to include the term "day-fishing" to qualify "trips," and the term should therefore remain in the statute and be given meaning. Presumably "day-fishing trips" are contrasted to overnight trips. CDFW recommends that the reference to "day-fishing trips" remain in sec. 7151(e). |
| 13215            | 7151(f), (g)     | No comment  | CDFW is not commenting on changes that relate to the reorganization of the code at this time. The reference to "part" in sec. 7151(g) should remain.  |
| 13255            | 6596.1           | FGC agrees that this portion of sec. 6596.1(a) only applies to "a person sport fishing," and, therefore, has no application to aquaculture business activities. FGC believes the change described in CLRC's note would have no practical effect. Reorganization of the Fish and Game Code is outside the scope of the current review.   | CDFW is not commenting on changes that relate to the reorganization of the code at this time. That said, subsections 6596.1(a) and (f) specify fees for a "sport fishing ocean enhancement validation" and have no application to aquaculture business activities.  |
| 13405(a)         | 7182.1(a)        | No comment  | Should CLRC address the 2013 AZ-CA Compact, sec, 7182.1 can be deleted. Obsolete.   |

| Proposed Section | Existing Section           | Fish and Game Commission   | Department of Fish and Wildlife  |
|------------------|----------------------------|--|--|
| 13405(b)         | 7185                       | No comment   | Should CLRC address the 2013 AZ-CA Compact, sec. 7185 can be repealed. Obsolete.   |
| 13500            | 7120                       | FGC believes that sec. 7120 could be revised to add references to amphibians and reptiles as the following Article provides for issuing sport fishing licenses granting the privilege to take amphibians and reptiles.   | CDFW agrees that sec. 7120 could be revised to add references to amphibians and reptiles because the following article provides for the issuance of sportfishing licenses granting the privilege to take amphibians and reptiles.  |
| 13600            | 7121, 1 <sup>st</sup> para | FGC believes that the addition of reptiles would be a significant substantive change as including reptiles in sec. 7121 would add a new crime to the code which is not clearly beneficial. Sec. 5061 already authorizes FGC to establish regulations for reptiles. FGC notes that the section applies to "fish and amphibia," but Fish and Game Code defines "fish" to include amphibians.   | The inclusion of reptiles in sec. 7121 would be a significant substantive change that would add a new crime (sale or purchase of reptiles) to the code that is not clearly beneficial. Sec. 5061 already authorizes the Fish and Game Commission to establish rules and regulations for the commercial take, sale, transport, import, or export of reptiles. The purchase or sale of native reptiles is made unlawful by California Code of Regulations, title 14, section 40, except as such purchase or sale is provided for in the regulations. CDFW considers it unnecessary to add reptiles to sec. 7121.   |
| 13605            | 7121, 2 <sup>nd</sup> para | FGC believes that the proposed restatement of sec. 7121, paragraph 2, would have unintended consequences, is not clearly beneficial, and may be controversial by limiting what is currently a crime to buy and sell the described fish anywhere, and by removing reference to vessels "that carry sport fishermen." Therefore, the proposed restatement would cause a significant substantive change in the meaning of the provisions. | The proposed restatement of sec. 7121, para. 2, significantly and substantively changes the meaning of the text because the re-drafted text limits the crime to buying, selling, or possessing the described fish to buying, selling, or possessing those fish in a place of business where fish are bought, sold, or processed. Sec. 7121, para. 2 prohibits the purchase or sale of the described fish regardless of the location. The proposed restatement also eliminates sec. 7121's reference to barges, boats, or vessels that carry sport fishermen. The restatement changes the requirement to a prohibition where the fish was "taken by sport fishing". These changes are not plainly beneficial and are potentially controversial. |
| 13705            | 7232                       | No comment   | No Note. Comment. CDFW believes that the reference to "or any portion thereof," in sec. 7232 can be repealed.  |
| 14200            | 7700(d)                    | FGC believes the definition of "stamp" in sec. 7700(d) already applies to secs. 7852.1, 7852.2 ad 7857.No comment on the applicability of the definition of "stamp" in sec. 7700(d) to other sections of code; reorganization of the Fish and Game Code is outside the scope of the current review.  | The definition of "stamp" in sec. 7700(d) covers all the uses of the term in the chapter. The chapter includes the sections given in the Note as using that term but not having a governing definition (e.g. 7852.1, 7852.2 and 7857). All of these sections are in the chapter to which the definition of stamp applies. CDFW does not believe the definition needs to be more widely applied (e.g. to  |

| Proposed Section | Existing Section              | Fish and Game Commission  | Department of Fish and Wildlife  |
|------------------|-------------------------------|---|--|
|                  |                               |   | sec. 12003.5) because "stamp" is a commonly understood term.   |
| 14205            | 7601                          | FGC believes that the addition of a comma at the end of line 33 further complicates what can be an already confusing sentence and may change the meaning; therefore, FGC suggests removing the comma.   | Note is informational only. No comment. However, the addition of a comma at the end of line 33 in proposed section 14205 after "vessel" may change the meaning of sec. 7601. |
| 14300            | 8603                          | FGC believes that amending in sec. 8603 the reference to "provided in this chapter or Chapter 4 of this part" to read "authorized by this code" would not cause a problem.  | CDFW agrees that the reference to "provided in this chapter or Chapter 4 of this part" in sec. 8603 should be amended to "authorized by this code."                          |
| 14500            | 7850                          | No comment  | CDFW agrees that sec. 7850(c) first sentence should be revised to indicate that the term "person" as used in the section includes only natural persons.                      |
| 14600            | 7852(a)-(b)                   | FGC believes the proposed restatement of sec. 7852(a)-(d) does not create substantive changes to the meaning of the provisions.   | The restatement would not substantively change the intended meaning of sec. 7852(a) and (b).   |
| 14615            | 7850(c), 2 <sup>nd</sup> sent | No comment  | CDFW agrees that sec. 7850(c) second sentence could be extended to all commercial fishing entitlements.  |
| 14620            | 6596.1(d), f), (g)            | FGC agrees that sec. 6596.1(d) specifies fees for a "commercial ocean enhancement validation" and, therefore, has no application to aquaculture business activities. Reorganization of the Fish and Game Code is outside the scope of the current review.   | CDFW is not addressing the relocation of sections of the code at the time.   |
| 14650            | 7857(n)                       | No comment  | No comment   |
| 14860            | 7852.4                        | FGC believes the proposed restatement changes the intended meaning of the existing provision by changing the required insurance and who is protected, which is potentially controversial and without clear benefit; therefore, it is a significant substantive change and outside the scope of this review. | The restatement of sec. 7852.4 appears to substantively change the intended meaning of the existing provision.   |
| 14870            | 7856                          | FGC believes that the proposed restatement of sec. 7856€ would not substantively change the intended meaning of the provision.  | The restatement would not substantively change the intended meaning of sec. 7856(e).   |
| 15060            | 7892, 3 <sup>rd</sup> sent    | FGC believes that the commercial aircraft registration fee is subject to adjustment by the method described in sec. 713 (pursuant to sec. 1050).  | Sec. 7892 is understood to be subject to the adjustment described in sec. 713.   |

| Proposed Section | Existing Section | Fish and Game Commission   | Department of Fish and Wildlife  |
|------------------|------------------|--|--|
| 15100            | 8398             | FGC believes that the second paragraph citation should be changed to sec. 15400 (related to leasing of state water bottoms). | The correct citation in the second paragraph of sec. 8398 should be to existing sec. 15400.  |
| 15105            | 8400             | FGC believes that the proposed restatement of sec. 8400(d) would not substantively change its intended meaning.              | Restatement of sec. 8400(d) would not substantively change its intended meaning.   |
| 15200            | 1100             | No comment   | Note is informational only. No comment.  |
| 15525            | 8667             | No comment   | CDFW is not addressing the relocation of sections of the code at this time. CDFW has not experienced any issues with the current location of sec. 8667 in the article titled "Nets Generally in Particular Districts". |
| 15530            | 8668             | No comment   | CDFW is not addressing the relocation of sections of the code at this time. CDFW has not experienced any issues with the current location of sec. 8668 in the article titled "Nets Generally in Particular Districts". |
| 15535            | 8669             | No comment   | CDFW is not addressing the relocation of sections of the code at this time. CDFW has not experienced any issues with the current location of sec. 8669 in the article titled "Nets Generally in Particular Districts". |