

Memorandum 2021-27

**Fish and Game Law: Phase One Comments
(Cumulative Draft of Material Previously Reviewed)**

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.⁴ Phase One would consist of comments on changes to the text of existing law. Phase Two would address the proposed organizational changes.

Thereafter, the Commission decided to include proposed changes to the text of existing law based on consideration of Phase One comments in a draft recommendation to revise the *existing* Fish and Game Code.⁵

For continuing reference, attached is a cumulative draft of the material that the Commission has approved to date for inclusion in that draft recommendation. Also attached is a second cumulative document, identifying code sections for which the staff is seeking further information relating to a proposed textual change.

Respectfully submitted,

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Staff Counsel

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 2019-44, pp. 8-10; Minutes (Sept. 2019), p. 4.

5. See Memorandum 2021-11; Minutes (Feb. 2021), p. 5.

PROPOSED LEGISLATION

Staff Note. The proposed changes reflected in this cumulative draft have been provisionally approved by the Commission for inclusion in a draft recommendation that would propose multiple revisions of the Fish and Game Code.

Comments. A draft of an official Commission “Comment,” which would be included in any final recommendation, follows each revised code section in the cumulative draft. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

The Commission welcomes public comment on any issue relating to the content of this draft or any other aspect of this study.

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PROPOSED LEGISLATION

FISH AND GAME CODE

1 **Fish & Game Code § 70 (amended). “Resident”**

2 SEC. _____. Section 70 of the Fish and Game Code is amended to read:

3 70. “Resident” means any person who has resided continuously in the State of
4 California for six months or more immediately prior to the date of his application
5 for a license or permit, any person on active military duty with the Armed Forces
6 of the United States or auxiliary branch thereof, or any person enrolled in the Job
7 Corps established pursuant to Section 2883 of Title 29 of the United States Code.

8 **Comment.** Section 70 is amended to make the section gender neutral.

9 **Fish & Game Code § 398 (amended). Falconry**

10 SEC. _____. Section 398 of the Fish and Game Code is amended to read:

11 398. The base year for determining the inflationary index applied to the fee
12 established by Section 396 shall be the 1984–85 fiscal year, ~~and the base year for~~
13 ~~determining the inflationary index to be applied to the fee established by Section~~
14 ~~397 shall be the 1985–86 fiscal year.~~

15 **Comment.** Section 398 is amended to delete obsolete material.

16 **Fish & Game Code § 456 (amended). Deer management**

17 SEC. _____. Section 456 of the Fish and Game Code is amended to read:

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

28 **Comment.** Section 456 is amended to delete obsolete material.

29 **Fish & Game Code § 711 (amended). Statement of legislative intent regarding funding**

30 SEC. _____. Section 711 of the Fish and Game Code is amended to read:

31 711. (a) It is the intent of the Legislature to ensure adequate funding from
32 appropriate sources for the department. To this end, the Legislature finds and
33 declares that:

1 (1) The costs of nongame fish and wildlife programs shall be provided annually
2 in the Budget Act by appropriating money from the General Fund, through
3 nongame user fees, and sources other than the Fish and Game Preservation Fund
4 to the department for these purposes.

5 (2) The costs of commercial fishing programs shall be provided out of revenues
6 from commercial fishing landing fees, license fees, and other revenues, from
7 reimbursements and federal funds received for commercial fishing programs, and
8 other funds appropriated by the Legislature for this purpose.

9 (3) The costs of hunting and sportfishing programs shall be provided out of
10 hunting and sportfishing revenues and reimbursements and federal funds received
11 for hunting and sportfishing programs, and other funds appropriated by the
12 Legislature for this purpose. These revenues, reimbursements, and federal funds
13 shall not be used to support commercial fishing programs, free hunting and fishing
14 license programs, or nongame fish and wildlife programs.

15 (4) The costs of managing lands managed by the department and the costs of
16 wildlife management programs shall be supplemented out of revenues in the
17 Native Species Conservation and Enhancement Account in the Fish and Game
18 Preservation Fund.

19 (5) Hunting, sportfishing, and sport ocean fishing license fees shall be adjusted
20 annually to an amount equal to that computed pursuant to Section 713. However, a
21 substantial increase in the aggregate of hunting and sportfishing programs shall be
22 reflected by appropriate amendments to the sections of this code that establish the
23 base sport license fee levels. The inflationary index provided in Section 713 shall
24 not be used to accommodate a substantial increase in the aggregate of hunting and
25 sportfishing programs.

26 (6) The costs of a conservation and mitigation banking program, including, but
27 not limited to, costs incurred by the department during its adoption of guidelines
28 for, and the review, approval, establishment, monitoring, and oversight of, banks,
29 shall be reimbursed from revenues of conservation and mitigation bank application
30 fees imposed pursuant to Sections 1798.5, 1798.6, and 1799.

31 (b) The director and the Secretary of the Natural Resources Agency, with the
32 department's annual budget submittal to the Legislature, shall submit a report on
33 the fund condition, including the expenditures and revenue, for all accounts and
34 subaccounts within the Fish and Game Preservation Fund. The department shall
35 also update its cost allocation plan to reflect the costs of program activities.

36 (c) For purposes of this ~~article~~ section, "substantial increase" means an increase
37 in excess of 5 percent of the Fish and Game Preservation Fund portion of the
38 department's current year support budget, excluding cost-of-living increases
39 provided for salaries, staff benefits, and operating expenses.

40 **Comment.** Subdivision (c) of Section 711 is amended to provide greater specificity without
41 changing the substance of the provision.

1 **Fish & Game Code § 2014 (amended). Damages**

2 SEC. _____. Section 2014 of the Fish and Game Code is amended to read:

3 2014. (a) It is the policy of this state to conserve its natural resources and to
4 prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or
5 amphibia.

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

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

12 ~~(c)~~ (d) An action to recover damages under this section shall be brought in the
13 name of the people of the state, in a court of competent jurisdiction in the county
14 in which the cause of action arose. The State Water Resources Control Board shall
15 be notified of, and may join in, any action brought under this section when the
16 activities alleged to have caused the destruction of any bird, mammal, fish, reptile,
17 or amphibian may involve either the unlawful discharge of pollutants into the
18 waters of the state or other violation of Division 7 (commencing with Section
19 13000) of the Water Code.

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

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

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

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

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

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

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

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

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

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

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

3 **Fish & Game Code § 2021 (amended). Shark fin**

4 SEC. ____ . Section 2021 of the Fish and Game Code is amended to read:

5 2021. (a) As used in this section “shark fin” means the raw, dried, or otherwise
6 processed detached fin, or the raw, dried, or otherwise processed detached tail, of
7 an elasmobranch.

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

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

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

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

19 **Comment.** Section 2021 is amended to delete obsolete material.

20 **Fish & Game Code § 2021.5 (amended). Shark fin**

21 SEC. ____ . Section 2021.5 of the Fish and Game Code is amended to read:

22 2021.5. (a) Notwithstanding Section 2021, all of the following provisions apply:

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

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

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

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

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

40 **Comment.** Section 2021.5 is amended to delete obsolete material.

1 **Fish & Game Code § 2582 (amended). Administrative penalties for specified conduct**

2 SEC. _____. Section 2582 of the Fish and Game Code is amended to read:

3 2582. (a) The department may impose ~~civil liability~~ an administrative penalty
4 upon any person pursuant to this chapter for any of the following acts done for
5 profit or personal gain:

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

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

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

22 (4) Unlawfully possess any bird, mammal, amphibian, reptile, or fish, or any
23 endangered or threatened species, or any fully protected bird, mammal, or fish
24 which has been taken, possessed, transported, or sold in violation of this code or
25 any regulations adopted pursuant to this code within the maritime and territorial
26 jurisdiction of the state or within the portions of the special maritime jurisdiction
27 of the United States upon which the State of California exercises concurrent
28 jurisdiction, either by statute, deputization, or by contract with the United States.

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

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

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

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

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

6 **Fish & Game Code § 2583 (amended). Administrative penalties for specified conduct**

7 SEC. ____ . Section 2583 of the Fish and Game Code is amended to read:

8 2583. (a) Except as provided in subdivision (b), any person who violates this
9 code or any regulation adopted to carry out this code, and, with the exercise of due
10 care, should have known that the birds, mammals, amphibians, reptiles, or fish, or
11 the endangered or threatened species, or the fully protected birds, mammals, or
12 fish were taken, possessed, transported, imported, received, purchased, acquired,
13 or sold in violation of, or in a manner unlawful under, this code, may be assessed a
14 ~~civil~~ an administrative penalty. The ~~civil~~ administrative penalty imposed under
15 this chapter by the department shall not be more than ten thousand dollars
16 (\$10,000) for each bird, mammal, amphibian, reptile, or fish, or for each
17 endangered or threatened species, or each fully protected bird, mammal, or fish
18 unlawfully taken, possessed, transported, imported, received, purchased, acquired,
19 or sold. This ~~civil~~ administrative penalty may be in addition to any other penalty,
20 civil or criminal, provided in this code or otherwise by law.

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

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

26 **Fish & Game Code § 2584 (amended). Penalty process**

27 SEC. ____ . Section 2584 of the Fish and Game Code is amended to read:

28 2584. (a) Upon an actionable violation, the department shall consult, as to the
29 appropriate civil or criminal remedy, with the district attorney in the jurisdiction
30 where the violation was alleged to have occurred. Before proceeding with a civil
31 action, the department shall seek the concurrence of the Attorney General.

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

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

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

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

39 (c) The director, after investigation of the facts and circumstances, may issue a
40 complaint to any person on whom a ~~civil~~ an administrative penalty may be
41 imposed pursuant to Section 2582 or 2583. The complaint shall allege the acts or

1 failures to act that constitute a basis for a ~~civil~~ an administrative penalty and the
2 amount of the proposed ~~civil~~ administrative penalty. The complaint shall be served
3 by personal service or certified mail and shall inform the person so served that a
4 hearing shall be conducted within 60 days after the person has been served, unless
5 the person waives the right to a hearing. If the person waives the right to a hearing,
6 the department shall issue an order setting liability in the amount proposed in the
7 complaint. If the person has waived the right to a hearing or if the department and
8 the person have entered into a settlement agreement, the order shall be final.

9 (d) Any hearing required under this section shall be conducted by a referee or
10 hearing board according to the procedures specified in Sections 11507 to 11517,
11 inclusive, of the Government Code, except as otherwise provided in this section.
12 In making a determination, the hearing officer may consider the records of the
13 department in the matter, the complaint, and any new facts brought to his or her
14 attention by that person. The hearing officer shall be the sole trier of fact as to the
15 existence of a basis for liability under Section 2582 or 2583. The hearing officer
16 shall make the determination of the facts of the case and shall prepare and submit
17 the proposed decision, including recommended penalty assessment, to the director
18 for his or her review and assistance in the penalty assessment process.

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

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

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

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

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

11 **Fish & Game Code § 2585 (amended). Forfeiture not precluded by penalty**

12 SEC. _____. Section 2585 of the Fish and Game Code is amended to read:

13 2585. The ~~civil~~ administrative penalties imposed under this chapter are in
14 addition to any forfeiture of equipment pursuant to Section 12157 or forfeiture of
15 birds, mammals, amphibia, reptiles, or fish pursuant to Section 12159.

16 **Comment.** Section 2585 is amended to replace a reference to “civil penalties” with a reference
17 to “administrative penalties.” This is a nonsubstantive clarification.

18 **Fish & Game Code § 2586 (amended). Reward**

19 SEC. _____. Section 2586 of the Fish and Game Code is amended to read:

20 2586. (a) The director may pay a reward from any funds available for that
21 purpose to any person who furnished information which led to an arrest, a criminal
22 conviction, an order of assessment of a ~~civil~~ an administrative penalty, or for
23 forfeiture of property for any violation of this code or any regulation adopted
24 pursuant to this code. The amount of reward, if any, shall be designated by the
25 director with the advice of the CalTIP Award Board.

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

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

30 **Fish & Game Code § 2587 (amended). Enforcement of penalty**

31 SEC. _____. Section 2587 of the Fish and Game Code is amended to read:

32 2587. (a) Notwithstanding Section 12511 of the Government Code, the
33 department may retain or appoint legal counsel to prepare and prosecute civil
34 actions under this chapter.

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

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

1 **Fish & Game Code § 2588 (amended). Deposit of penalties and revenue**

2 SEC. _____. Section 2588 of the Fish and Game Code is amended to read:

3 2588. All ~~civil~~ administrative penalties and revenues from forfeitures collected
4 pursuant to this chapter shall be deposited in the Fish and Game Preservation
5 Fund.

6 **Comment.** Section 2588 is amended to replace a reference to a reference to “civil penalties”
7 with a reference to “administrative penalties.” This is a nonsubstantive clarification.

8 **Fish & Game Code § 3270 (amended). Game bird club**

9 SEC. _____. Section 3270 of the Fish and Game Code is amended to read:

10 3270. ~~(a)~~ In order to provide additional hunting by stocking domestically
11 propagated game birds, and to permit the taking of game birds under conditions
12 that will not conflict with the public interest, any person who owns or controls the
13 hunting rights on a tract of land may apply to the department for a game bird club
14 license authorizing the taking of game birds upon that land in accordance with the
15 regulations of the commission for the administration, including the
16 implementation and enforcement, of this section.

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

18 **Comment.** Section 3270 is amended to delete obsolete material.

19 **Fish & Game Code § 3500 (amended). Upland game bird**

20 SEC. _____. Section 3500 of the Fish and Game Code is amended to read:

21 3500. (a) Resident game birds are as follows:

22 (1) Doves of the genus *Streptopelia*, including, but not limited to, spotted doves,
23 ringed turtledoves, and Eurasian collared-doves.

24 (2) California quail and varieties thereof.

25 (3) Gambel’s or desert quail.

26 (4) Mountain quail and varieties thereof.

27 (5) Sooty or blue grouse and varieties thereof.

28 (6) Ruffed grouse.

29 (7) Sage hens or sage grouse.

30 (8) Hungarian partridges.

31 (9) Red-legged partridges including the chukar and other varieties.

32 (10) Ring-necked pheasants and varieties thereof.

33 (11) Wild turkeys of the order Galliformes.

34 (12) White-tailed ptarmigan.

35 (b) Migratory game birds are as follows:

36 (1) Ducks and geese.

37 (2) Coots and gallinules.

38 (3) Jacksnipe.

39 (4) Western mourning doves.

40 (5) White-winged doves.

41 (6) Band-tailed pigeons.

1 (c) References in this code to “game birds” means both resident game birds and
2 migratory game birds.

3 **Comment.** Subdivision (a) of Section 3500 is amended to include the white-tailed ptarmigan
4 as a resident game bird. This is consistent with existing law and practice. See Section 3683(a)(8)
5 (“resident game bird” includes white tailed ptarmigan). See also 14 Cal. Code Reg. §§ 257, 313
6 (white-tailed ptarmigan regulated as upland game bird).

7 **Fish & Game Code § 3702.5 (amended). Duck stamp**

8 SEC. _____. Section 3702.5 of the Fish and Game Code is amended to read:

9 3702.5. The department may permit individual artists to sell a limited number of
10 prints of duck stamp related artwork or posters.

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

12 **Comment.** Section 3702.5 is amended to delete obsolete material.

13 **Fish & Game Code § 3704 (amended). Duck stamp fee**

14 SEC. _____. Section 3704 of the Fish and Game Code is amended to read:

15 3704. Two dollars and twenty-five cents (\$2.25) of the amount collected by the
16 department for each state duck stamp sold shall be allocated by the commission
17 for the purposes of the North American Waterfowl Management Plan in those
18 areas of Canada from which come substantial numbers of waterfowl migrating to,
19 or through, California. These funds shall be matched with federal or private funds
20 available for that purpose. The available balance of the funds shall be used for any
21 project authorized pursuant to Section 3702 in California. However, any lands
22 acquired in California with those funds shall be open to waterfowl hunting as a
23 public shooting ground or wildlife management area.

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

25 **Comment.** Section 3704 is amended to delete obsolete material.

26 **Fish & Game Code § 3704.5 (amended). Waterfowl projects**

27 SEC. _____. Section 3704.5 of the Fish and Game Code is amended to read:

28 3704.5. Waterfowl projects authorized pursuant to Sections 3702 and 3460 are
29 not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public
30 Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of
31 Division 4 of the Military and Veterans Code. With the approval of the entity in
32 control of property affected by a project, the department may make grants to, or
33 enter into contracts with, nonprofit organizations for the accomplishment of those
34 projects, or the department may reimburse the controlling entity for its costs of
35 accomplishing the project.

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

37 **Comment.** Section 3704.5 is amended to delete obsolete material.

38 **Fish & Game Code § 4332 (amended). Deer tag**

39 SEC. _____. Section 4332 of the Fish and Game Code is amended to read:

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

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

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

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

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

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

27 **Fish & Game Code § 8625 (amended). Nets for halibut**

28 SEC. ____ . Section 8625 of the Fish and Game Code is amended to read:

29 8625. (a) Except as otherwise provided in this code, set gill nets and trammel
30 nets with mesh size of not less than 8¹/₂ inches may be used to take California
31 halibut.

32 (b) Except as provided in subdivision (c), not more than 1,500 fathoms (9,000
33 feet) of gill net or trammel net shall be fished in combination each day for
34 California halibut from any vessel in ocean waters.

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

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

1 **Comment.** Section 8625 is amended to delete obsolete material.

2 **Fish & Game Code § 8626 (amended). Nets for halibut**

3 SEC. _____. Section 8626 of the Fish and Game Code is amended to read:

4 8626. (a) Notwithstanding Section 8625, and where consistent with the
5 determination made pursuant to subdivisions (b) and (c), the director may reduce
6 the minimum mesh size permitted for gill and trammel nets used to take California
7 halibut from 8¹/₂ inches to not less than 8 inches in any or all areas south of a line
8 extending 240° magnetic from the boundary line between the Counties of Los
9 Angeles and Ventura.

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

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

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

29 **Comment.** Section 8626 is amended to delete obsolete material.

30 **Fish & Game Code § 11018 (amended). District 10**

31 SEC. _____. Section 11018 of the Fish and Game Code is amended to read:

32 11018. The following constitutes Fish and Game District 10:

33 The ocean waters and the tidelands of the State to high-water mark lying
34 between the southern boundary of Mendocino County and a line extending west
35 from the Pigeon Point lighthouse in San Mateo County, including the waters of
36 Tomales Bay to a line drawn from the mouth of the unnamed creek approximately
37 1500 feet north of Tomasini Point southwesterly 218° magnetic to the mouth of
38 the unnamed creek at Shell Beach, and excluding Bodega Lagoon and all that
39 portion of Bolinas Bay lying inside of Bolinas bar, that portion of San Francisco
40 Bay lying east of a line drawn from Point Bonita to Point Lobos and all rivers,
41 streams, and lagoons.

1 ~~The amendment of this section by the Legislature at the 1963 Regular Session~~
2 ~~has no effect on the cultivation of oysters by persons licensed under Article 4~~
3 ~~(commencing with Section 6480), Chapter 5, Part 1, Division 6.~~

4 **Comment.** Section 11018 is amended to delete an obsolete provision.

5 **Fish & Game Code § 12002 (amended). Specified punishments**

6 SEC. ____ . Section 12002 of the Fish and Game Code is amended to read:

7 12002. (a) Unless otherwise provided, the punishment for a violation of this
8 code that is a misdemeanor is a fine of not more than one thousand dollars
9 (\$1,000), imprisonment in a county jail for not more than six months, or by both
10 that fine and imprisonment.

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

14 (1) Section 1059.

15 (2) Subdivision (b) of Section 4004.

16 (3) Section 4600.

17 (4) Paragraph (1) or (2) of subdivision (a) of Section 5650.

18 (5) A first violation of Section 8670.

19 (6) Section 10500.

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

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

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

34 (2) This subdivision does not apply to any violation of Section 1052, 1059,
35 1170, 5650, ~~5653.9~~, 6454, 6650, or 6653.5.

36 **Comment.** Paragraph (2) of subdivision (d) of Section 12002 is amended to delete an
37 erroneous cross-reference.

**PROPOSED CHANGES FOR WHICH STAFF IS SEEKING
FURTHER INFORMATION**

The table below identifies code sections for which further information remains needed relating to a proposed textual change.

(Items noted as "Category 2" items correspond to proposed changes previously identified in a memorandum as "presumptively correct," and unless an objection is raised by commenters, will be presented as consent items for approval in a future memorandum. Items noted as "Category 4" items correspond to proposed changes for which the staff is seeking further information.)

Proposed Section	Existing Section	Memorandum	Page no.	Category
545 (intro)	3683	21-16	8	2
3210	1055.3	21-20	16	2
4420	12020	21-20	16	2
4492	2584	21-20	16	2
4900	12002.6	21-26	9	2
4934	12002.4	21-26	8	2
5332	3680	21-26	8	2
5344(b)	3801.6	21-26	8	2
5680	12002.8	21-26	9	2
5710	12002.8	21-26	9	2
5720	12002.8(d)-(f)	21-26	9	2
5820	12002.8(d)-(f)	21-26	9	2
5880	8429	21-26	10	2
6000	6656	21-26	8	2
6050	12002.5	21-26	10	2
6204	12008.1(a)	21-26	10	2
6250	711.4(f)	21-26	10	2
6500	5653(c)	21-26	11	2
600	90	21-16	8	4
3250	1055.1 (c), 1 st sent	21-16	9	4
3250	1055.1 (c), 2 nd sent	21-16	9	4
3250	1055.1 (c), 3 rd -4 th sent	21-16	9	4
4862	12002.2(c)	21-26	11	4
4864	12000(b)(2)	21-26	12	4

Proposed Section	Existing Section	Memorandum	Page no.	Category
4874	12153	21-26	12	4
4975	8631	21-26	13	4
4980	8632, 9008	21-26	13	4
4982	8633, 9008	21-26	13	4
4984	8635, 9008	21-26	13	4
4986	8630 (2 nd para), 9008	21-26	13	4
4988	8634, 9008	21-26	13	4
5108	12002.3	21-26	13	4
5802	12009	21-26	14	4
5804	12006.6	21-26	14	4