

## First Supplement to Memorandum 2021-39

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

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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 the 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.

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1. Any California Law Revision Commission document referred to in this supplement 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 revisions were supported by one or both commenting entities, with neither opposing the change. The staff recommends that the revisions 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 revision in this section be discussed, it will not be individually presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to provisionally approve all revisions in this section as a group, for inclusion in the draft recommendation.

### **Proposed Section 24800 (Existing Section 15700)**

Proposed Section 24800 would continue existing Section 15700, which contains an obsolete reference to the State Department of Health Services. Both entities agree, as proposed in a Note following the proposed section, that the existing section should instead refer to the Department of Public Health.

**The staff recommends that a conforming revision of existing Section 15700 be included in the draft recommendation as follows:**

#### **§ 15700 (amended). Composition of committee**

15700. The director shall appoint an Aquaculture Development Committee consisting of the following persons:

(a) At least 12 members representing all sectors of the fresh and salt water aquaculture industry.

(b) One member representing the department, two members from and chosen by the University of California, one with expertise in aquaculture science and one with expertise in outreach to the fisheries community, and one member each from and chosen by the Department of Food and Agriculture, the California Coastal Commission, the State Lands Commission, the State Water Resources Control Board, the ~~State Department of Health Services~~ Department of Health Services, and the Joint Legislative Committee on Fisheries and Aquaculture. The member of the committee appointed by the Joint Legislative Committee on Fisheries and Aquaculture shall meet and, except as otherwise provided by the California Constitution, advise the committee to the extent that this advisory participation is not incompatible with ~~his or her~~ their position as a Member of the Legislature.

**Comment.** Section 15700 is amended to update an obsolete reference to the State Department of Health Services. See Health & Safety Code Sections 20 and 131052(6).

The section is also amended to make it gender neutral.

**Proposed Section 26000 (Existing Section 3200)**

Proposed Section 26000 would continue existing Section 3200, which specifies when a person must obtain a domesticated game breeder’s license. Section 3200 exempts licensed pheasant clubs from this license requirement, except as provided in Section 3283, a section that was repealed in 1994.<sup>7</sup>

A Note following proposed Section 26000 invited comment on substituting for Section 3283 a section added to the Fish and Game Code in the bill that repealed Section 3283. However, both entities indicate the proposed substitute section is not analogous to Section 3283, nor is any other section in the existing code. As a result, both entities advise that Section 3200 should simply be amended to delete the obsolete cross-reference.

**The staff recommends that an amendment of existing Section 3200 be included in the draft recommendation, as follows:**

**§ 3200 (amended). License requirement**

3200. Any person engaged in raising or importing, or who keeps in captivity, in this state domesticated game birds or domesticated game mammals which normally exist in the wild in this state shall procure a domesticated game breeder’s license if the birds or mammals are kept more than 30 days after acquisition. No license is, however, required of any of the following:

(a) Licensed pheasant clubs, ~~except to the extent provided in Section 3283.~~

(b) Licensed domesticated migratory game bird shooting areas as defined in Article 4 (commencing with Section 3300) of Chapter 2 of Part 1 of Division 4.

(c) Keepers of hotels, restaurants, boardinghouses, or clubs serving the meat of those birds or mammals for actual consumption on the premises.

(d) Retail meat dealers selling such meat to customers for actual consumption.

(e) Public zoological gardens possessing those birds or mammals for exhibition purposes or for the purpose of disposing of the birds or mammals by sale, exchange, or donation to other public zoological gardens.

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7. See 1994 Cal. Stat. ch. 849.

**Comment.** Subdivision (a) of Section 3200 is amended to delete a cross-reference to a repealed code section.

**Proposed Section 26850 (Existing Section 2124), Proposed Section 5204 (Existing Section 2125), Proposed Section 26855 (Existing Section 2126), Proposed Section 27020 (Existing Section 2127), Proposed Section 27220 (Existing Section 2150.3)**

The proposed sections listed above all continue some or all of existing sections that refer to animals listed in existing Section 2118, but using verbiage that differs from the verbiage used in other sections making that same reference. To avoid confusion or misunderstanding based on the varying usage, the proposed sections would standardize the referring language in the existing sections.

A Note following two of the proposed sections asked whether this standardization would substantively change the intended meaning of the existing provisions.<sup>8</sup> FGC did not respond to this inquiry, but DFW expressed support for the revision.

**The staff recommends that the amendments be included in the draft recommendation as follows:**

**§ 2124 (amended). License requirement**

2127. (a) The department may reimburse eligible local entities, pursuant to a memorandum of understanding entered into pursuant to this section, for costs incurred by the eligible local entities in the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal enumerated in or designated pursuant to Section 2118.

(b) The department may enter into memorandums of understanding with eligible local entities for the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal enumerated in or designated pursuant to Section 2118.

(c) The commission shall adopt regulations that establish specific criteria an eligible local entity shall meet in order to qualify as an eligible local entity.

(d) For the purposes of this division, “eligible local entity” means a county, local animal control officer, local humane society official, educational institution, or trained private individual that enters into a memorandum of understanding with the department pursuant to this section.

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8. The Note followed proposed Sections 27020 and 27220.

**Comment.** Subdivisions (a) and (b) of Section 2124 are amended to conform to statutory language used in other code sections referring to animals listed in Section 2118.

**§ 2125 (amended). Civil penalty**

2125. (a) In addition to any other penalty provided by law, any person who violates this chapter or any regulations implementing this chapter, is subject to a civil penalty of not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation. Except as otherwise provided, any violation of this chapter or of any regulations implementing this chapter is a misdemeanor punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars (\$1,000).

(b) The Attorney General, or the city attorney of the city or the district attorney or county counsel of the county in which a violation of this article occurs, may bring a civil action to recover the civil penalty in subdivision (a) and the costs of seizing and holding the animal ~~listed in~~ enumerated in or designated pursuant to Section 2118, except to the extent that those costs have already been collected as provided by subdivision (d). The civil action shall be brought in the county in which the violation occurs and any penalty imposed shall be transferred to the Controller for deposit in the Fish and Game Preservation Fund in accordance with Section 13001.

(c) In an action brought under this section, in addition to the penalty specified in subdivision (a), the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness' fees may also be recovered and those amounts shall be credited to the same operating funds as those from which the expenditures for those purposes were derived.

(d) (1) If an animal is confiscated because the animal was kept in contravention of this chapter or any implementing regulations, the person claiming the animal shall pay to the department or the new custodian of the animal an amount sufficient to cover all reasonable expenses expected to be incurred in caring for and providing for the animal for at least 30 days, including, but not limited to, the estimated cost of food, medical care, and housing.

(2) If the person claiming the animal fails to comply with the terms of ~~his or her~~ their permit and to regain possession of the animal by the expiration of the first 30-day period, the department may euthanize the animal or place the animal with an appropriate wild animal facility at the end of the 30 days, unless the person claiming the animal pays all reasonable costs of caring for the animal for a second 30-day period before the expiration of the first 30-day period. If the permittee is still not in compliance with the terms of the permit at the end of the second 30-day period, the department may

euthanize the animal or place the animal in an appropriate wild animal facility.

(3) The amount of the payments described in paragraphs (1) and (2) shall be determined by the department, and shall be based on the current reasonable costs to feed, provide medical care for, and house the animal. If the person claiming the animal complies with the terms of ~~his or her~~ their permit and regains possession of the animal, any unused portion of the payments required pursuant to paragraphs (1) and (2) shall be returned to the person claiming the animal no later than 90 days after the date on which the person regains possession of the animal.

**Comment.** Subdivision (b) of Section 2125 is amended to conform to statutory language used in other code sections referring to animals listed in Section 2118.

The section is also amended to make it gender neutral.

#### **§ 2126 (amended). Prohibited take**

2126. (a) Except as otherwise authorized by this code or regulations made pursuant thereto, it is unlawful for any person to take any mammal ~~as identified by~~ enumerated in or designated pursuant to Section 2118.

(b) This section does not prohibit the euthanasia of a mammal as appropriately directed by a licensed veterinarian or animal health technician.

**Comment.** Subdivision (a) of Section 2126 is amended to conform to statutory language used in other code sections referring to animals listed in Section 2118.

#### **§ 2127 (amended). Eligible local entity**

2127. (a) The department may reimburse eligible local entities, pursuant to a memorandum of understanding entered into pursuant to this section, for costs incurred by the eligible local entities in the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal enumerated in or designated pursuant to Section 2118.

(b) The department may enter into memorandums of understanding with eligible local entities for the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal enumerated in or designated pursuant to Section 2118.

(c) The commission shall adopt regulations that establish specific criteria an eligible local entity shall meet in order to qualify as an eligible local entity.

(d) For the purposes of this division, “eligible local entity” means a county, local animal control officer, local humane society official, educational institution, or trained private individual that enters into

a memorandum of understanding with the department pursuant to this section.

**Comment.** Subdivisions (a) and (b) of Section 2127 are amended to conform to statutory language used in other code sections referring to animals listed in Section 2118.

**§ 2150.3 (amended). Advisory committee**

2150.3. (a) The director shall appoint a committee to advise the director on the humane care and treatment of wild animals.

(b) The committee shall make recommendations to the director for the establishment of standards of performance for administration and enforcement, which shall include, but are not limited to, requiring that the eligible local entity possess a knowledge of humane wild animal training methods.

(c) The committee shall make recommendations to the director as to the frequency of inspections necessary for the enforcement and administration of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal enumerated in or designated pursuant to Section 2118.

(d) The committee shall advise and assist the director in entering into memorandums of understanding with eligible local entities and in determining whether the memorandums of understanding meet the requirements of this chapter.

**Comment.** Subdivision (c) of Section 2150.3 is amended to conform to statutory language used in other code sections referring to animals listed in Section 2118.

**Proposed Sections 29370, 31800 (Existing Section 4304)**

Proposed Sections 29370 and 31800 would restate parts of existing Section 4304 without intended substantive change.

A Note following each of the proposed sections invited comment on whether the proposed restatement would substantively change the intended meaning of the existing section. Both entities support the proposed restatement in part.

**Based on the entity comments, the staff recommends that an amendment of existing Section 4304 be included in the draft recommendation, as follows:**<sup>9</sup>

**§ 4304 (amended). Waste of game mammal**

4304. (a) No person shall ~~at any time~~ capture or destroy any deer and detach or remove from the carcass only the head, hide, antlers, or horns; nor shall any person at any time leave through carelessness

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9. A second Note following proposed Section 31800 inquired about revision of a cross-reference in Section 4304 to Section 4183, which has been repealed. See the additional discussion of proposed Section 31800 in the part of this supplement entitled "Further Input Required."

or neglect any game mammal or game bird which is in ~~his~~ their possession, or any portion of the flesh thereof usually eaten by humans, to go needlessly to waste.

(b) The provisions of this section shall not apply to game mammals taken under the authority of Sections 4152 and 4183 of this code.

**Comment.** Section 4304 is amended to add subdivisions and delete superfluous text, without making any substantive change.

The section is also amended to make it gender neutral.

### **Proposed Section 30505 (Existing Section 3700.1)**

Proposed Section 30505 would continue existing Section 3700.1(a), which relates to the taking of migratory game birds. In the tentative recommendation, the Commission proposed to modify a reference in the existing section to “any migratory game bird” that then excepted a long series of such birds, to instead refer only to the migratory game birds *not* excepted from the reference.

A Note following proposed Section 30505 invited comment on whether that revision would cause any problems. Both entities indicated support for the revision.

**The staff recommends that an amendment of existing Section 3700.1 be included in the draft recommendation, as follows:**

#### **§ 3700.1 (amended). Required validation**

3700.1. (a) It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 3031, to take ~~any migratory game bird, except jacksnipe, coots, gallinules, western mourning doves, white-winged doves, and band-tailed pigeons,~~ a duck or goose without first procuring a state duck hunting validation as provided in subdivision (b), and having that validation in ~~his or her~~ their possession while taking those birds.

(b) State duck hunting validations shall be sold for a fee of ten dollars (\$10) by the department and by license agents, who are authorized by the department pursuant to Section 1055.1, in the same manner as hunting licenses.

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

**Comment.** Subdivision (a) of Section 3700.1 is amended to simplify without substantive change a reference to the migratory game birds subject to the subdivision.

The subdivision is also amended to make it gender neutral.



### **Proposed Section 30530 (Existing Section 3701)**

Proposed Section 30530 would continue existing Section 3701, but would delete a cross-reference to “subdivision (e) of Section 3700,” as Section 3700 was repealed in 2015.<sup>10</sup> A Note following the proposed section invited comment on whether another provision should be referenced in place of the repealed cross-reference.

Both entities indicated support for the deletion of the existing cross-reference, and FGC indicates no awareness of any other provision that could be referenced in place of Section 3700(e).

**The staff recommends that an amendment of existing Section 3701 be included in the draft recommendation, as follows:**

#### **§ 3701 (amended). State Duck Stamp Account**

3701. All funds derived from the sale of state duck hunting validations ~~and~~, state duck stamps, and related items authorized by ~~subdivision (e) of Section 3700 or~~ subdivision (g) of Section ~~3700.2, 3700.2~~ shall be deposited in the State Duck Stamp Account in the Fish and Game Preservation Fund to permit separate accountability for the receipt and expenditure of these funds. An amount not to exceed 6 percent of the amount annually deposited in the account may be used for administrative overhead related to the use of those funds and for implementation of the federal Migratory Bird Harvest Program.

**Comment.** Section 3701 is amended to delete an obsolete cross-reference.

### **Proposed Section 31555 (Existing Section 3961)**

Proposed Section 31555 would restate existing Section 3961 without any intended substantive change.

Two Notes followed the proposed section. The first invited comment on whether the proposed restatement would substantively change the meaning of the existing section, and the second asked about the proposed revision of a reference in the existing section to a non-existent statutory article.

FGC did not respond to either Note. DFW believes the restatement would cause a significant substantive change,<sup>11</sup> but it supports the latter proposed revision.

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10. See 2015 Cal. Stat. ch. 683.

11. See the discussion of proposed Section 31555 in the part of this supplement entitled “Further Input Required.”

**The staff recommends that an amendment of existing Section 3961 be included in the draft recommendation, as follows:**

**§ 3961 (amended). Seizure or dispatch generally**

3961. Whenever an employee of the department is not present to carry out the provisions of Section 3960 with respect to any dog inflicting injury or immediately threatening to inflict injury to any deer, elk, or prong-horned antelope during the closed season for these mammals, any property owner, lessee, person holding a permit for the purpose of grazing livestock, or ~~his or her~~ their employee, may seize or dispatch the dog if it is found on ~~his or her~~ their land or premises without the permission of the person who is in immediate possession of the land. If the dog has on it any readily visible identification tag or license tag as prescribed by Section 30951 of the Food and Agricultural Code, and the dog is found in the act of immediately threatening to injure deer, elk, or prong-horned antelope, the dog may only be dispatched under this section if the dog has, and the owner has been notified that the dog has, previously threatened any of these species.

No action, civil or criminal, shall be maintained for a dog lawfully seized or dispatched pursuant to this ~~article~~ section.

The owner of a dog shall be notified within 72 hours of the seizure or dispatching of that dog under this section if it had the identification tag or license tag which is required pursuant to Section 30951 of the Food and Agricultural Code.

**Comment.** Section 3961 is amended to fix an incorrect cross-reference, and to make the section gender neutral.

**CHANGES THAT SHOULD NOT BE MADE**

The following proposed revision was opposed by one of the commenting entities, with neither supporting the change. The staff recommends that the revision 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 the revision in this section be discussed, it will not be individually presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff's intention is to ask the Commission to decide that any proposed revision in this section should not be included in the draft recommendation.

### **Proposed Section 25620 (Existing Section 6425(a))**

Proposed Section 25620 would continue existing Section 6425(b), which addresses funding for various programs. A Note following the proposed section inquired whether subdivision (a) of the existing section, indicating the amount that should be allocated to an identified program for the 1985-86 fiscal year, was obsolete and could be discontinued.

FGC did not respond to this Note. DFW agrees the provision is obsolete, but believes it should nevertheless be retained because it provides historical information that may be useful in the future.

**The staff recommends that deletion of subdivision (a) of existing Section 6435 *not* be included in the draft recommendation.**

#### CHANGES THAT SHOULD PRESUMPTIVELY BE MADE

The proposed revisions listed below were presented in a Commission Note in the tentative recommendation, and were not identified as problematic by either commenting entity. However, as the revisions were also not clearly supported by either entity, they are not yet recommended for inclusion in the draft recommendation. The staff will seek input from the entities relating to that support, but unless that input warrants a different approach, the staff will recommend in a future memorandum that the revisions that follow be provisionally approved for inclusion in the draft recommendation.

**This section of the supplement will also be treated as a consent item.** Unless a Commissioner or member of the public requests that a revision in this section be discussed, it will not be individually presented at the upcoming meeting.

**Proposed Section 24600 (Existing Section 15512); Proposed Section 24715 (Existing Section 15601); Proposed Section 25130 (Existing Section 1121.5); Proposed Section 26200 (Existing Section 3300); Proposed Section 30510 (Existing Section 3681); Proposed Section 31050 (Existing Section 3801);<sup>12</sup> Proposed Section 31550 (Existing Section 3960(c));<sup>13</sup> Proposed Section 31605 (Existing Section 4180.1)<sup>14</sup>**

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12. See also discussion of another aspect of proposed Section 31050 in the part of this memorandum entitled "No Further Action Recommended."

13. See also discussion of another aspect of proposed Section 31550 in the next part of this memorandum entitled "Further Input Required."

14. See also discussion of another aspect of proposed Section 31605 in the next part of this memorandum entitled "Further Input Required."

The proposed sections listed above would restate some or all of the corresponding existing sections without any intended substantive change, to make the provisions easier to understand and use.

In each instance, one or both entities agree the proposed restatement would not substantively change existing law, but neither entity offers clear support for the revision.

**The staff therefore recommends that the restatements be treated as presumptively correct, and absent objection from a commenter, presented for approval as consent items in a future memorandum.**

#### FURTHER INPUT REQUIRED

The staff believes that further input is required before resolving the treatment of the proposed revisions described below. The staff's intention is to work with the commenters informally to obtain that input, and then again present the proposed revisions for a decision by the Commission in a subsequent memorandum.

**This section of the supplement will also be treated as a consent item.** Unless a Commissioner or member of the public requests that a revision in this section be discussed, it will not be individually presented at the upcoming meeting.

#### **Proposed Section 26235 (Existing Section 3305)**

Proposed Section 26235 would restate existing Section 3305 to make the provision easier to understand and use, without any intended substantive change in meaning. A Note following the proposed section invited comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

FGC believes the restatement would not cause any substantive change in meaning. DFW generally agrees, but asserts that one aspect of the restatement would cause a significant substantive change.

**The staff recommends that it further discuss the proposed restatement with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

### **Proposed Section 26275 (Existing Section 3311)**

Proposed Section 26275 would continue existing Section 3311, which presently reads as follows:

3311. The licensee shall comply with all applicable federal laws or regulations relating to the releasing and shooting of domesticated migratory game birds.

The tentative recommendation proposed to revise the text of the provision to make clear it applies to *all* persons, rather than only an unspecified “licensee.”

A Note following proposed Section 26275 explained that the rationale for the substitution was two-fold. First, the provision does not make clear what type of “licensee” is contemplated, as existing Section 3311 appears in an article of the existing code containing provisions referring to two different types of licenses. In addition, the provision arguably implied that *non*-licensees were not required to comply with the provision.

The Note then invited comment on whether revising the section to make it applicable to all persons was appropriate.

Both entities appear to agree that the reference to a “licensee” may be problematic — FGC agrees the reference is ambiguous, and DFW says it is actually meant to apply to a permittee. However, both entities also assert that making the section applicable to all persons would expand the application of the section in a problematic way.

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

### **Proposed Section 29200 (Existing Section 356)**

Proposed Section 29200 would restate the first paragraph of existing Section 356 to clarify its meaning, without any intended substantive effect. That paragraph authorizes the taking of migratory game birds in compliance with “the federal laws and regulations and the regulations of the [FGC] as provided in Section 355.”

However, the second paragraph of Section 356 also authorizes the FGC to prescribe regulations relating to the taking of migratory game birds. To avoid confusion or misunderstanding, proposed Section 29200 would revise the cross-reference to “Section 355” in the first paragraph of Section 356 to instead refer to

the statutory title in which Sections 355 and 356 would appear in the tentative recommendation.

A Note following the proposed section invited comment on whether this revision was appropriate.

FGC responded that the proposed revision is outside the scope of “Phase One” review, as the new cross-reference would refer to a statutory title that is not part of the existing code.

DFW urges that the cross-reference to Section 355 should be revised to instead refer to the article in which both Sections 355 and 356 presently appear. However, it remains unclear whether that revision would be supported by FGC.

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

#### **Proposed Section 29215 (Existing Section 356)**

Proposed Section 29215 would continue the second paragraph of existing Section 356, which presently reads as follows:

In the event no regulations are prescribed by the proper federal agency, the commission may determine and fix the area or areas, the seasons and hours, the species, the bag and possession limits, and the total number that may be taken during any open season for the taking of migratory game birds, under such rules and regulations as the commission may prescribe. Such rules and regulations as the commission may prescribe shall have the same effect as if enacted by the Legislature.

Three Notes following the section raised multiple issues regarding the provisions in this paragraph.

FGC did not respond to these Notes. DFW has offered helpful responses, but as the paragraph addresses FGC regulations, the staff believes it would be helpful to learn whether FGC agrees with DFW’s comments before proposing any resolution of the issues presented.

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

### **Proposed Section 29220 (Existing Section 355)**

Proposed Section 29220 would continue without intended substantive change the third paragraph of existing Section 355, relating to FGC regulations adopted pursuant to Section 355. However, the proposed section would delete as superfluous a requirement that the regulations in question be filed with the Secretary of State; Government Code Section 11343 independently requires that filing.

A Note following the section explained the rationale for the deletion.

The entities disagree as to whether the deleted text is superfluous.

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

### **Proposed Section 31800 (Existing Section 4304)**

Proposed Section 31800 would restate parts of existing Section 4304 without intended substantive change.

A Note following the proposed section invited comment on whether the proposed restatement would substantively change the intended meaning of the restated text. Both entities supported the proposed restatement in part.<sup>15</sup>

A second Note asked about how to correct a cross-reference to former Section 4183, which was repealed in 1984.<sup>16</sup> Both entities suggested that the cross-reference should be to Section 4181.1.

The staff needs more information about why that substitution is correct.

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

### **Proposed Section 30010 (Existing Section 3801.6)**

Proposed Section 30010 would restate without intended substantive change a part of existing Section 3801.6, which governs the salvaging of nongame birds. A Note following the proposed section invited comment on whether the proposed restatement would substantively change the meaning of the restated text.

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15. See the discussion of proposed Sections 29370 and 31800 in the part of this supplement entitled "Changes That Should Be Made."

16. See 1984 Cal. Stat. ch. 1365.

Both entities believe an aspect of the restatement would cause a substantive change in the meaning of the section based on the grammatical construction of the restatement.

The issue raised by the entities might be relatively easily addressed. However, in reviewing the restatement, the staff noted another distinct and potentially significant ambiguity in the existing text not raised in the Note, which would be helpful to clarify.

**The staff recommends that it further discuss these issues with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

#### **Proposed Section 31110 (Existing Section 4181)**

Proposed Section 31110 would restate without any intended substantive effect existing Section 4181(a), which generally addresses depredation permits. Because the existing section applies to many different animals and the tentative recommendation proposed to restate such provisions in separate sections to apply to individual animals, proposed Section 31110 would apply only to depredation of wild turkeys.

A Note following the proposed section invited comment on whether the proposed restatement would substantively change the meaning of the restated provision.

Both entities assert that the restatement would create a significant substantive change to the meaning of the existing section, by referring to the wild turkeys in the singular rather than the plural. That concern can be easily addressed.

**As the entities have not offered input on other aspects of the restatement, the staff recommends that it further discuss the restatement with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

#### **Proposed Section 31550 (Existing Section 3960(c))**

Proposed Section 31550 would restate parts of existing Section 3960(c) without intended substantive change, to make the restated text easier to understand and use.

A Note following the proposed section invited comment on whether the proposed restatement would substantively change the meaning of the restated



provision. FGC did not comment on the Note, and DFW indicated it did not believe the restatement would cause a change in meaning.<sup>17</sup>

A second Note following the proposed section invited comment on an apparent inadvertent lack of parallelism between subdivisions (b) and (c) of existing Section 3960.

FGC did not respond to this inquiry. DFW commented that it did not see a problem with the existing language. The staff would like to better explain its concern to the commenting entities and get their reaction.

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

### **Proposed Section 31555 (Existing Section 3961)**

Proposed Section 31555 would restate the text of existing Section 3961 without any intended substantive effect.

Two Notes followed the proposed section. The first invited comment on whether the proposed restatement would substantively change the meaning of the restated provision, and the second asked about revision of a reference in the section to a non-existent statutory article.

FGC did not respond to either inquiry. DFW supports revising the reference to the non-existent article,<sup>18</sup> but otherwise believes one aspect of the proposed restatement would cause a significant substantive change in the meaning of the provision. While the staff appreciates DFW's specific concern, it believes the issue raised could be easily addressed while still allowing the section to be more clearly stated.

**The staff recommends that it further discuss the restatement of the existing provision with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

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17. See the discussion of proposed Section 31550 in the part of this supplement entitled "Changes That Should Presumptively Be Made."

18. See the discussion of proposed Section 31555 in the part of this supplement entitled "Changes That Should Be Made."

**Proposed Section 31605 (Existing Section 4180.1)<sup>19</sup>; Proposed Section 31610 (Existing Section 4190)**

The proposed sections above continue existing sections that refer to “depredator mammal” or “depredatory mammal.”

Notes following the two sections invited comment on the meaning of those terms as used in the sections.

Both entities indicate that the terms are not defined in either statute or regulation, but that in common usage would be understood to mean a mammal “causing damage or destruction.”

The staff believes it would be helpful to discuss with the two entities the substitution in the two existing sections of a more descriptive reference consistent with the entities’ understanding of the terms.

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

NO FURTHER ACTION RECOMMENDED

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

**This entire section of this supplement will also be treated as a consent item.** Unless a Commissioner or member of the public requests that a revision in this section be discussed, it will not be individually 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 revisions discussed below be set aside with no further action taken.

**Proposed Section 29350 (Existing Section 3502)**

Proposed Section 29350 would continue without substantive change existing Section 3502, which prohibits using a mammal other than a dog, or an imitation of a mammal, as a “blind” in approaching or taking a game bird. A Note following the proposed section invited comment on the intended meaning of the term “blind” as used in the section.

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19. See also the discussion of proposed Section 31605 in the part of this supplement entitled “Changes That Should Presumptively Be Made.”

Both entities indicated that it is understood in the hunting community that using an animal as a “blind” means hiding behind the animal. In light of the offered information, the staff sees no need for any revision of the existing section.

#### **Proposed Section 29360 (Existing Section 3508)**

Proposed Section 29360 would continue existing Section 3508, which contains a reference to “any wild game bird or domesticated game bird.” As neither of those types of birds are defined in the existing code, a Note following the proposed section inquired as to whether the quoted reference might be shortened to refer simply to “any game bird.”

Both entities indicate that would be an unhelpful revision, as the two types of game birds are referred to and distinctly treated in regulations. Based on the comment of the entities, the staff agrees that the suggested revision of the existing section should not be made.

#### **Proposed Section 30115 (Existing Section 3802)**

Proposed Section 30115 would restate existing Section 3802 without intended substantive change. A Note following the proposed section inquired as to whether the proposed restatement would cause any substantive change in the meaning of the existing section.

FGC did not respond to the Note. However, DFW asserted its belief that the restatement would cause a significant substantive change in the meaning of the section. After consideration of DFW’s comment, the staff agrees that the restatement of the existing section should not be made.

#### **Proposed Section 31050 (Existing Section 3801)**

Proposed Section 31050 would restate existing Section 3801 without intended substantive change. A Note following the proposed section invited comment on whether the proposed restatement would cause any substantive change in the section, and both entities indicated it would not.<sup>20</sup>

A second Note following the proposed section inquired whether additional statutory language should be added to the existing section to address a potentially inadvertent change to the section made by the Legislature when amending the

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20. See the discussion of proposed Section 31050 in the part of this supplement entitled “Changes That Should Presumptively Be Made.”

section in 2007. Both entities believe the suggested language should not be added to the section.

After consideration of this comment, the staff agrees that the restatement of the existing section should not be made.

**Proposed Section 31510 (Existing Section 3960(b))**

Proposed Section 31510 would continue without substantive change existing Section 3960(b). However, a Note following the proposed section inquired about two possible ambiguities in the text of the provision.

FGC did not comment on this Note. DFW offered responses addressing both issues.

Based on consideration of the comment from DFW, the staff believes no clarification of the existing provision is needed.

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 a response indicated the absence of any need for reform, the issues raised in the Notes will not be discussed further unless a Commissioner requests such discussion.

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

- **Proposed Section 2800 (Existing Section 1050(b))**
- **Proposed Section 2930 (Existing Section 1053.1(a))**
- **Proposed Section 3000 (Existing Section 1050(d))**
- **Proposed Section 3005 (Existing Section 1050(f))**
- **Proposed Section 3360 (Existing Section 1059(b))**
- **Proposed Section 4452 (Existing Section 1745(h))**
- **Proposed Section 4464(a) (Existing Section 12013)**
- **Proposed Section 4464(b) (Existing Section 12013)**
- **Proposed Section 4800 (Existing Section 12002(b)(2))**
- **Proposed Section 4960 (new section)**
- **Proposed Section 5000 (Existing Section 8601.5)**
- **Proposed Section 7340 (Existing Section 716.3)**

- **Proposed Section 5342 (Existing Section 12002(c))**
- **Proposed Section 11000 (Existing Section 4004(c))**
- **Proposed Section 25405 (Existing Section 1123)**
- **Proposed Section 25420 (Existing Section 1125)**
- **Proposed Section 25850 (Existing Section 6402)**
- **Proposed Section 29850 (Existing Section 3800)**
- **Proposed Section 30205 (Existing Section 3511)**
- **Proposed Section 30425 (Existing Section 3858)**
- **Proposed Section 31115 (Existing Section 4188)**
- **Proposed Section 31500 (Existing Sections 3032, 3960, 3960.2, 3960.4, 3960.6)**
- **Proposed Section 31805 (Existing Section 3034)**

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 2021-39.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
2800	1050(b)	No comment	No comment	21-39s1
2930	1053.1(a)	No comment	No comment	21-39s1
3000	1050(d)	No comment	No comment	21-39s1
3005	1050(f)	No comment	No comment	21-39s1
3360	1059(b)	No comment	No comment	21-39s1
3750	1050(e)	No comment	No comment	21-39s1
4452	1745(h)	No comment	No comment	21-39s1
4464(a)	12013	Reorganization of Fish and Game Code is outside the scope of the current review; however, FGC agrees that the torture punishment in subdivision 12013(c) could be separated from the multiple bag limit punishment in subdivisions 12013(a) and (b) during any consideration of reorganization.	CDFW agrees that the torture punishment in sec. 12013(c) can be separated from the multiple bag limit punishment in secs. 12013(a) and (b). Sec. 12013(g) should apply to both torture and bag limit punishments.	21-39s1
4464(b)	12013	Reorganization of Fish and Game Code is outside the scope of the current review; however, during consideration of any reorganization it should be noted that subdivision 12013(g) applies to subdivisions 12013(a) through (c).	CDFW agrees that the torture punishment in sec. 12013(c) can be separated from the multiple bag limit punishment in secs. 12013(a) and (b). Sec. 12013(g) should apply to both torture and bag limit punishments.	21-39s1
4800	12002(b)(2)	No comment	No comment	21-39s1
4960	new section	No comment	CDFW has no comment on this Note because CDFW is not addressing the reorganization of the code at this time.	21-39s1
5000	8601.5	No comment	No comment	21-39s1
7340	716.3	No comment	No comment	21-39s1
11000	4004(c)	No comment	No comment	21-39s1
24600	15512	FGC believes that the restatement of the first sentence of sec. 15512(a) does not change its substantive effect.	CDFW agrees that the restatement of the first sentence of sec. 15512(a) for clarification does not create substantive changes to the section.	21-39s1
24715	15601	FGC believes that the proposed restatement of sec. 15601 does not change its substantive effect.	CDFW agrees that the restatement of sec. 15601 for clarification does not create substantive changes to the section.	21-39s1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
24800	15700	FGC believes that sec. 15700 should be amended to refer to the State Department of Public Health.	CDFW agrees that sec. 15700 should be amended to refer to the State Department of Public Health.	21-39s1
25130	1122.5	No comment	CDFW believes there would be no substantive change in the meaning of the section.	21-39s1
25405	1123	No comment	CDFW is not commenting on the reorganization of the code at this time, so it has no comment on whether placing this section in this new title is appropriate.	21-39s1
25420	1125	No comment	CDFW is not commenting on the reorganization of the code at this time, so it has no comment on whether placing this section in this new title is appropriate.	21-39s1
25620	6424, 6425(b)	No comment	While it is technically accurate that sec. 6425(a) is obsolete, CDFW does not want the language deleted because it believes that having ready access to the language (e.g. it's still in the code) is valuable for the future. For example, language on how much funding was available when the program started may provide valuable historical information.	21-39s1
25850	6402	No comment	CDFW is not commenting on the Note because it is beyond the scope of its review at this time. (CDFW is not addressing the overall recodification of the code.)	21-39s1
26000	3200	FGC agrees that since sec. 3283 has been repealed, sec. 3200(a) should be amended to delete "except to the extent provided in sec. 3283." FGC believes that the proposed restatement, with sec. 3270(a) as a replacement for the repealed section, is not appropriate; there is nothing analogous to sec. 3283 in existing law.	Sec. 3200(a) should be amended to delete ",except to the extent provided in Section 3283". Sec. 3283 has been repealed. Sec. 3270(a) is not a good replacement for the repealed section; there is no analog to sec. 3283 in existing law.	21-39s1
26200	3300	CLRC note (1): FGC agrees that in the second paragraph of sec. 3300, a "domesticated migratory game bird" is a migratory game bird held live in captivity at or after six weeks of age; FGC believes the proposed restatement does not cause a substantive change in the meaning. (2) While FGC agrees that the definition of "domesticated migratory game bird" applies not just "for the purposes of this section", but also to secs. 3031,	Two comments: (1) CDFW agrees that in sec. 3300 second paragraph a "domesticated migratory game bird" is a migratory game bird held live in captivity at or after 6 weeks of age. (2) CDFW agrees that the definition of "domesticated migratory game bird" applies not just "for the purposes of this section", but also applies to sec. 3031, 3200, 3216, and 3240.5. CDFW has no comment on whether the definition should be applied to the code generally because by doing so there may be a	21-39s1



Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
		3200, 3216, and 3240.5, it is not clear the same would hold true by applying the definition to the code generally as it may cause unintended consequences and, therefore, be a significant substantive change.	significant substantive change that causes unintended consequences.	
26205	3300	No comment	No comment	21-39s1
26235	3305	FGC believes the restatement does not cause any substantive change in the meaning of the provisions.	CDFW disagrees with the change in sec. 3305 to make it apply to "a person licensed by" and "licensees". The prohibitions applies to everyone and this would cause a significant substantive change in the meaning of the section that is not beneficial. Other than this change, CDFW believes that the rest of the restatement does not cause a substantive change in the meaning of the provision.	21-39s1
26275	3311	FGC agrees that the use of "licensee" in sec. 3311 is ambiguous in determining to which license it applies. However, changing the language from "licensee" to "a person" expands the the scope of the section and it is not clear such expansion is beneficial.	CDFW believes that changing the language in sec. 3311 from "licensees" to "persons" is a substantive change to the code that expands the scope of that section and is not clearly beneficial. The license referred to in sec. 3311 is the Licensed Domesticated Migratory Game Bird Shooting Area Permit required by sec. 3300 although that section refers to it as a license not a permit.	21-39s1
26850	2124	No comment	No comment	21-39s1
26855	2126	No comment	No comment	21-39s1
27020	2127	No comment	Sec. 2127(a) and (b) can be amended to add "listed in or" where referring to sec. 2118. This will not substantively change the meaning of sec. 2127.	21-39s1
27220	2150.3	No comment	Sec 2150.3(c) can be amended to add "listed in or" where referring to sec. 2118.	21-39s1
27405	2185(a)	FGC concurs that the reference in sec. 2185 to sec. 2188 is obsolete and should be changed to sec. 2189.	The reference in sec. 2185 to sec. 2188 should be repealed. Obsolete. The reference should be changed to sec. 2189.	21-39s1
27700	2190	No comment	No comment	21-39s1
29200	356	CLRC's note is outside the scope of the current review. Without reviewing the proposed change in the context of the Fish and Game Code reorganization into a new Fish and Wildlife Code, it may not be appropriate to reference the proposed title (Title 1) that may include other sections and/or subdivisions of Fish and Game Code that could affect or be affected by the change in reference.	CDFW believes that the reference in the first paragraph of sec. 356 should be changed from "Section 355" to "this article" so it includes the regulations that are authorized by the second paragraph of sec. 356.	21-39s1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
29215	356	No comment	Three comments. (1) The reference in the second paragraph of sec. 356 "such rules and regulations" refers to those adopted pursuant to sec. 356, not 355. (2) CDFW agrees that the term "rules and" can be deleted, but disagrees that "such" should be changed. "Such" helps make clear that the phrase refers to the regulations described immediately preceding it. (3) CDFW does not have a comment on the meaning and effect of the last sentence of sec. 356, but agrees that it should remain in the code.	21-39s1
29220	355	FGC believes that paragraph 3 of sec. 355 cannot be deleted as it would be a significant substantive change; the reference to filing with the Secretary of State includes an important provision for an effective upon filing date, a provision not authorized anywhere else in code specifically for migratory birds.	Sec. 355 paragraph 3 can be amended to delete the first phrase relating to filing with the Secretary of State because that is required by the APA. The second phrase regarding regulations becoming effective upon filing cannot be deleted.	21-39s1
29350	3502	FGC believes that using an animal as a blind is commonly known in the hunting community as hiding behind an animal (or imitation of an animal).	Using an animal as a blind is commonly known as hiding behind an animal (or imitation of an animal).	21-39s1
29360	3508	FGC believes that, regardless of whether the two terms are the entire universe of game birds, sec. 3508 should not be amended to refer to "game birds" since referring to "wild game bird" or domesticated game bird" helps orient the reader to the appropriate regulations and season information.	Sec. 3508 should not be amended to refer to "game birds". The reference to "wild game bird" or "domesticated game bird" helps readers to know which regulations to read since they have different seasons.	21-39s1
29370	4304	FGC believes that the proposal to delete "at any time" in sec. 4304 does not cause any substantive change and improves clarity. FGC has no comment about the proposal to divide up sec. 4304 as reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW agrees that sec. 4304 can be amended to delete "at any time". CDFW believes changing "leave" to "allow" changes the meaning of the section. "Leave" is a simple act. "Allow" implies some choice or knowledge. See also comments on sec. 4304 below.	21-39s1
29850	3800(a)	FGC notes the proposed relocation of the section is beyond the scope of the current review. FGC is not addressing recodification at this time.	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.)	21-39s1
30010(a)	3801.6	FGC believes that the proposed restatement of the third sentence of sec. 3801.6(b)(2) would cause a substantive change in the meaning;	The proposed restatement of the third sentence of sec. 3801.6(b)(2) would cause a significant substantive change in the meaning that is not	21-39s1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
		the proposed language changes what are currently three "or" statements of circumstance into two statements of circumstance joined with an "and," such that the third circumstance must be met in addition to the first and second. FGC believes the proposed restatement narrows who is prohibited from salvaging bird parts. Replacing the "and" with "or" would address the issue.	beneficial because it changes an "or" to an "and" thereby changing the people who are prohibited from salvaging bird parts.	
30115	3802	No comment	CDFW believes that the proposed restatement of sec. 3802 would cause a significant substantive change in the meaning of this section that is not beneficial because "for the purpose of controlling and eradicating" is narrower than "in relation to the control or eradication of..." predatory birds.	21-39s1
30205	3511	No comment	CDFW is not commenting on the relocation of the definition of "project" in sec. 711.2 because it is beyond the scope of its review at this time. (CDFW is not addressing the overall recodification of the code.) That said, CDFW does not see the need for an additional cross reference in sec. 3511(a) because it would be redundant.	21-39s1
30425	3858	No comment	Note is informational only. No comment.	21-39s1
30505	3700.1	FGC agrees that sec. 3700.1 could be simplified to refer to ducks and geese since they are the only migratory game birds not excepted from the section.	Sec. 3700.1 could be amended to refer to "ducks or geese" since they are the only migratory game birds not excepted from the section.	21-39s1
30510	3681	FGC agrees that the restatement of sec. 3681 (except district numbers) would not cause a substantive change in the meaning of the section.	The restatement of sec. 3681 (except district numbers) would not cause a substantive change in the meaning of the section.	21-39s1
30530	3701	FGC believes the reference to sec. 3700(e) can be deleted in sec. 3701 because no such section exists; FGC is not aware of another provision that could be referenced in place of sec. 3700(e).	The reference to sec. 3700(e) can be deleted in sec. 3701 because no such section exists.	21-39s1
31050	3801	CLRC note (1): FGC believes that the proposed restatement of sec. 3801 (except section numbers) does not cause a substantive change in meaning.  (2) FGC believes that restoring the introductory language removed by	Two comments: (1) CDFW believes that the restatement of sec. 3801 (except section numbers) does not cause a substantive change in meaning.  (2) CDFW believes that the introductory sentence should not be restored since in 2007 the legislature, either	21-39s1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
		the legislature in 2007 would be a substantive change in this section; FGC believes it already retains authority over English sparrows and starlings under sec. 3800.	intentionally or inadvertently, chose to eliminate the Fish and Game Commission's authority to use this section to regulate the take of these birds. CDFW believes that the deleted language is not necessary since the Fish and Game Commission has the authority to regulate starlings and sparrows pursuant to sec. 3800. Restoring that language would be a substantive change in the meaning of this section.	
31110	4181	FGC believes that the proposed restatement of sec. 4181 is not beneficial in that current law allows a depredation permit to be issued for a flock of turkeys, whereas the restatement suggests that permits must be issued for individual turkeys; this would be a significant substantive change in the meaning of the section, though easily could be remedied. FGC has no comment about the proposal to divide sec. 4181 by species as reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW generally believes that the restatement of sec. 4181(a) causes a significant substantive change in the meaning of the section that is both not beneficial and would be controversial because under current law a depredation permit can be issued for multiple animals (e.g. flocks of turkeys, herd of deer) by the use of the term "animals". The restatement uses the term "the wild turkey" suggesting that permits must be issued for individual turkeys. Further, CDFW has no comment at this time about the changes to divide 4181 by species. The latter is beyond the scope of this review.	21-39s1
31115	4188	FGC believes that the proposed restatement of sec. 4188 will not cause a substantive change in the meaning of the section. FGC has no comment about the proposal to divide sec. 4188 by species as reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW generally agrees that the restatement of sec. 4188 does not cause a substantive change in the meaning of the section, although has no comment at this time about the changes to divide sec. 4188 by species. The latter is beyond the scope of this review.	21-39s1
31500	3032,3960,3960.2,3960.4,3960.6	CLRC note (1): The change in sections relating to the definitions of "bear" and "pursue" is beyond the scope of the current review.  CLRC note (2): FGC cannot comment at this time on whether the definitions in sec. 3960 should apply beyond that section; identifying and reviewing all the sections where those terms are used requires greater capacity than FGC currently has available. FGC believes the proposal may lead to unintended consequences and, hence, be a significant substantive change.	Two comments: (1) CDFW is not commenting on the change in sections relating to the definitions of "bear" and "pursue" because it is beyond the scope of its review at this time. (CDFW is not addressing the overall recodification of the code.) (2) CDFW has no comment on whether the definitions in sec. 3960 should apply beyond that section because it has not identified all the sections where those terms are used. To do so would be overly burdensome and may be a significant substantive change that has unintended consequences.	21-39s1
31510	3960	No comment	Two comments: (1) The terms "permit" and "allow" are not synonymous in sec. 3960(b). "Unlawful to ... allow" means	21-39s1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
			the activity is prohibited; "Unlawful to...permit" means that CDFW may not issue a permit or otherwise approve. (2) CDFW has not experienced problems with the definition of "big game" being in Title 14 rather than the code. If CLRC believes it is necessary to add a definition of "big game" or "big game mammal" it could do so either by reiterating the existing regulation's substantive content or by incorporating the regulation by reference.	
31550	3960	No comment	Two comments: (1) Except as discussed in (2) below, CDFW believes that the restatement of subsections 3960(c)(1), (2) and (4) does not cause a substantive change in the meaning of that section. (2) CDFW believes sec. 3960(c)(1)(A) does not need to be amended to allow the department to capture uncontrolled dogs in ecological reserves/game refuges because it already allows CDFW to capture them anywhere; there is no geographic limitation in (c)(1)(A).	21-39s1
31555	3961	No comment	Two comments: (1) CDFW believes that the restatement of sec. 3961 causes a significant substantive change in the meaning that is not beneficial because the second sentence only applies to dogs "in the act of immediately threatening", not those "inflicting injury" included in the first sentence. (2) CDFW agrees that the reference to "article" in the second sentence of 3961 is erroneous and should be "section".	21-39s1
31605	4180.1	CLRC note (1): FGC believes that the proposed restatement of sec. 4180.1 would not cause any substantive change in the meaning.  CLRC note (2): FGC notes that "depredator mammal" is not defined in statute or regulation. FGC believes common usage means a mammal causing damage or destruction.	Two comments: (1) The restatement of sec. 4180.1 would not cause any substantive change in the meaning. (2) "Depredator mammal" is not a term defined in statute or regulation. In common usage, it would mean a mammal causing damage or destruction.	21-39s1
31610	4190	CLRC note (1): FGC believes that the term "large" is ambiguous in sec. 4190.  CLRC note (2): FGC notes that "depredatory mammal" is not defined in statute or regulation. FGC believes common usage means a mammal causing damage or destruction.	Two comments: (1) CDFW believes that the term "large" is ambiguous as used in sec. 4190 but has not had difficulty administering this section. (2) "Depredatory mammal" is not a term defined in statute or regulation. In common usage, it would mean a mammal that is causing damage or destruction.	21-39s1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Memo
31800	4304	<p>CLRC note (1): FGC believes that the proposed restatement of "to go needlessly to waste" to "needlessly wasted" does not have an appreciable benefit, nor does it appear to be consistent with other proposed changes to sec. 4304.</p> <p>CLRC note (2): FGC believes that the reference in sec. 4304 to repealed sec. 4183 should be replaced with sec. 4181.1.</p>	<p>Two comments: (1) CDFW does not agree that the phrase "go needlessly to waste" should be changed to "needlessly wasted" as this change does not improve clarity, nor does it agree at this time to the other changes to sec. 4304 like removing game birds or dividing up the first sentence into two provisions. (2) The reference in sec. 4304 to repealed sec. 4183 should be replaced with sec. 4181.1.</p>	21-39s1
31805	3034	No comment	Note is informational only. No comment.	21-39s1
34415	4304		<p>Three comments: (1) &amp; (2) See other comments on 4304. (3) Sec. 4304 is not inconsistent with 4302 (retaining head for enforcement) and 4303 (using skin/hides for articles for sale) because even though 4302 requires detaching the head and 4303 allows for the sale of hides, it is still a violation of 4304 if only those parts of a deer are removed hence the use of the word "only" in existing law.</p>	21-39s1