

Memorandum 2021-40

**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 revisions to the text of existing law. Phase Two would address the proposed organizational changes.

Thereafter, the Commission decided it would consider all received Phase One comments in conjunction with the preparation of a final recommendation to the Legislature to revise the *existing* Fish and Game Code.⁵

Following that decision, the Commission has been considering proposed revisions for inclusion in that final recommendation, in conjunction with Phase One Comments on those revisions, in a series of presented memoranda.

This memorandum presents a report on the current status of the Commission's review of these revisions. It includes:

- (1) A cumulative draft of revisions that the Commission has provisionally approved for inclusion in the final recommendation, based on apparent approval from at least one commenting agency and no disapproval from any commenter.

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.

- (2) A cumulative list of proposed revisions that were neither expressly approved nor disapproved by the commenting agencies (to obtain clarification from the agencies as to their position on the revisions).
- (3) A cumulative list of proposed revisions for which the Commission requires further information from the commenting agencies before deciding on inclusion of the revision in the final recommendation.

The Commission has directed that this material be arranged and presented in a manner that would best assist commenters in tracking and providing further responses where needed relating to revisions listed in the material. Commenters are encouraged to contact Commission staff with any request that would facilitate their review of these revisions.

Respectfully submitted,

Steve Cohen
Staff Counsel

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 of
6 the United States or auxiliary branch thereof, or any person enrolled in the Job Corps
7 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 and
19 Game Commission on the progress that is being made toward the restoration and
20 maintenance of California’s deer herds. ~~The first report shall be submitted on or~~
21 ~~before October 1, 1989.~~ The report shall include program activities regarding deer
22 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 the
27 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 nongame
3 user fees, and sources other than the Fish and Game Preservation Fund to the
4 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 Native
17 Species Conservation and Enhancement Account in the Fish and Game Preservation
18 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 the
33 fund condition, including the expenditures and revenue, for all accounts and
34 subaccounts within the Fish and Game Preservation Fund. The department shall also
35 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)~~ (c) 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 ~~(e)~~ (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 in
14 which the cause of action arose. The State Water Resources Control Board shall be
15 notified of, and may join in, any action brought under this section when the activities
16 alleged to have caused the destruction of any bird, mammal, fish, reptile, or
17 amphibian may involve either the unlawful discharge of pollutants into the waters
18 of the state or other violation of Division 7 (commencing with Section 13000) of
19 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 the
30 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 Attorney
33 General in the enforcement of this section shall be deposited by the department in
34 the subaccounts of the Fish and Wildlife Pollution Account in the Fish and Game
35 Preservation Fund as specified in Section 13011.

36 ~~(g)~~ (h) For purposes of this section, "local agency" includes any city, county, city
37 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 fins
15 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 § 2541 (amended). Surety bond**

2 SEC. _____. Section 2541 of the Fish and Game Code is amended to read:

3 2541. Each applicant for a guide license shall submit proof of having obtained a
4 surety bond in the amount of not less than one thousand dollars (\$1,000) ~~which shall~~
5 ~~insure, conditioned on~~ faithful performance of the guide and ~~his or her~~ the guide's
6 agents or employees in fulfilling their responsibilities to their clients. No guide
7 license shall be issued to any applicant who does not submit proof of having a bond
8 ~~which that~~ is valid for the term of the license.

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

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

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

13 2582. (a) The department may impose ~~civil liability~~ an administrative penalty
14 upon any person pursuant to this chapter for any of the following acts done for profit
15 or personal gain:

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

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

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

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

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

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

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

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

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

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

16 SEC. _____. Section 2583 of the Fish and Game Code is amended to read:

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

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

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

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

36 SEC. _____. Section 2584 of the Fish and Game Code is amended to read:

37 2584. (a) Upon an actionable violation, the department shall consult, as to the
38 appropriate civil or criminal remedy, with the district attorney in the jurisdiction
39 where the violation was alleged to have occurred. Before proceeding with a civil
40 action, the department shall seek the concurrence of the Attorney General.

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

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

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

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

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

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

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

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

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

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

18 **Comment.** Section 2584 is amended to replace references to a “civil penalty,” “civil penalties,”
19 or “civil liability” with references to an “administrative penalty” or “administrative penalties.”
20 These are nonsubstantive clarifications.

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

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

23 2585. The ~~civil~~ administrative penalties imposed under this chapter are in addition
24 to any forfeiture of equipment pursuant to Section 12157 or forfeiture of birds,
25 mammals, amphibia, reptiles, or fish pursuant to Section 12159.

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

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

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

30 2586. (a) The director may pay a reward from any funds available for that purpose
31 to any person who furnished information which led to an arrest, a criminal
32 conviction, an order of assessment of a ~~civil~~ an administrative penalty, or for
33 forfeiture of property for any violation of this code or any regulation adopted
34 pursuant to this code. The amount of reward, if any, shall be designated by the
35 director with the advice of the CalTIP Award Board.

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

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

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

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

1 2587. (a) Notwithstanding Section 12511 of the Government Code, the
2 department may retain or appoint legal counsel to prepare and prosecute civil
3 actions under this chapter.

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

7 **Comment.** Section 2587 is amended to replace a reference to “civil penalties” with a reference
8 to “administrative penalties.” This is a nonsubstantive clarification.

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

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

11 2588. All ~~civil~~ administrative penalties and revenues from forfeitures collected
12 pursuant to this chapter shall be deposited in the Fish and Game Preservation Fund.

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

15 **Fish & Game Code § 3004.5 (amended). Take within California condor range**

16 SEC. _____. Section 3004.5 of the Fish and Game Code is amended to read:

17 3004.5. (a)(1) Nonlead centerfire rifle and pistol ammunition, as determined by
18 the commission, shall be required when taking big game, as defined in the
19 department’s mammal hunting regulations (14 Cal. Code Regs. 350), with rifle or
20 pistol, and when taking coyote, within the California condor range.

21 (2) For purposes of this section, “California condor range” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~(i)~~ (h) The commission shall promulgate regulations by July 1, 2015, that phase
31 in the requirements of this section. The requirements of this section shall be fully
32 implemented statewide by no later than July 1, 2019. If any of the requirements of
33 this section can be implemented practicably, in whole or in part, in advance of July
34 1, 2019, the commission shall implement those requirements. The commission shall
35 not reduce or eliminate any existing regulatory restrictions on the use of lead
36 ammunition in California condor range unless or until the additional requirements
37 for use of nonlead ammunition as required by this section are implemented.

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

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

4 **Comment.** Paragraph (3) of subdivision (d) of Section 3004.5, and subdivision (e) of Section
5 3004.5, are deleted as obsolete.

6 **Fish & Game Code § 3040 (amended). Free hunting days**

7 SEC. ____ . Section 3040 of the Fish and Game Code is amended to read:

8 3040. (a) Notwithstanding Section 3031, the director may designate two days per
9 year as “Free Hunting Days.” One free hunting day may be established during the
10 fall hunting season, and the other free hunting day may be established during the
11 winter hunting season. The department shall publish the exact dates of the free
12 hunting days in annual publications of the department regarding current hunting
13 regulations.

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

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

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

29 (2) Any required tags or report cards.

30 (3) Any required federal entitlements.

31 (4) Any required entry permits.

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

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

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

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

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

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

3 SEC. ____ . Section 3270 of the Fish and Game Code is amended to read:

4 3270. ~~(a)~~ In order to provide additional hunting by stocking domestically
5 propagated game birds, and to permit the taking of game birds under conditions that
6 will not conflict with the public interest, any person who owns or controls the
7 hunting rights on a tract of land may apply to the department for a game bird club
8 license authorizing the taking of game birds upon that land in accordance with the
9 regulations of the commission for the administration, including the implementation
10 and enforcement, of this section.

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

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

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

14 SEC. ____ . Section 3500 of the Fish and Game Code is amended to read:

15 3500. (a) Resident game birds are as follows:

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

18 (2) California quail and varieties thereof.

19 (3) Gambel's or desert quail.

20 (4) Mountain quail and varieties thereof.

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

22 (6) Ruffed grouse.

23 (7) Sage hens or sage grouse.

24 (8) Hungarian partridges.

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

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

27 (11) Wild turkeys of the order Galliformes.

28 (12) White-tailed ptarmigan.

29 (b) Migratory game birds are as follows:

30 (1) Ducks and geese.

31 (2) Coots and gallinules.

32 (3) Jacksnipe.

33 (4) Western mourning doves.

34 (5) White-winged doves.

35 (6) Band-tailed pigeons.

36 (c) References in this code to "game birds" means both resident game birds and
37 migratory game birds.

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

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

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

3 3702.5. The department may permit individual artists to sell a limited number of
4 prints of duck stamp related artwork or posters.

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

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

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

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

9 3704. Two dollars and twenty-five cents (\$2.25) of the amount collected by the
10 department for each state duck stamp sold shall be allocated by the commission for
11 the purposes of the North American Waterfowl Management Plan in those areas of
12 Canada from which come substantial numbers of waterfowl migrating to, or
13 through, California. These funds shall be matched with federal or private funds
14 available for that purpose. The available balance of the funds shall be used for any
15 project authorized pursuant to Section 3702 in California. However, any lands
16 acquired in California with those funds shall be open to waterfowl hunting as a
17 public shooting ground or wildlife management area.

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

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

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

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

22 3704.5. Waterfowl projects authorized pursuant to Sections 3702 and 3460 are
23 not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public
24 Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of Division
25 4 of the Military and Veterans Code. With the approval of the entity in control of
26 property affected by a project, the department may make grants to, or enter into
27 contracts with, nonprofit organizations for the accomplishment of those projects, or
28 the department may reimburse the controlling entity for its costs of accomplishing
29 the project.

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

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

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

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

34 4332. (a) Any resident of this state, 12 years of age or over, who possesses a valid
35 hunting license, may procure one tag for the taking of one deer by one person during
36 the current license year, upon payment of the base fee of ten dollars (\$10) for the
37 license year beginning July 1, 1986, and the base fee as adjusted under Section 713
38 for subsequent license years.

39 (b) Any nonresident of this state, 12 years of age or over, who possesses a valid
40 hunting license, may procure one tag for the taking of one deer by one person during

1 the current license year, upon payment of the base fee of one hundred dollars (\$100)
2 for the license year beginning July 1, 1986, and the base fee as adjusted under
3 Section 713 for subsequent license years.

4 (c) If provided in regulations adopted by the commission under Section 200, any
5 resident of this state, 12 years of age or over, who possesses a deer tag may procure
6 one additional deer tag for the taking of one additional deer during the current
7 license season, upon payment of the base fee of twelve dollars and fifty cents
8 (\$12.50) for the license years beginning July 1, 1986, and the base fee as adjusted
9 under Section 713 for subsequent license years.

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

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

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

20 **Fish & Game Code § 5650.1 (amended). Specified punishments**

21 SEC. _____. Section 5650.1 of the Fish and Game Code is amended to read:

22 5650.1. (a) A person who violates Section 5650 is subject to a civil penalty of not
23 more than twenty-five thousand dollars (\$25,000) for each violation.

24 (b) The civil penalty imposed for each separate violation pursuant to this section
25 is separate, and in addition to, any other civil penalty imposed for a separate
26 violation pursuant to this section or any other provision of law, except as provided
27 in subdivision (j).

28 (c) In determining the amount of a civil penalty imposed pursuant to this section,
29 the court shall take into consideration all relevant circumstances, including, but not
30 limited to, the nature, circumstance, extent, and gravity of the violation. In making
31 this determination, the court shall consider the degree of toxicity and volume of the
32 discharge, the extent of harm caused by the violation, whether the effects of the
33 violation may be reversed or mitigated, and with respect to the defendant, the ability
34 to pay, the effect of any civil penalty on the ability to continue in business, any
35 voluntary cleanup efforts undertaken, any prior history of violations, the gravity of
36 the behavior, the economic benefit, if any, resulting from the violation, and any
37 other matters the court determines justice may require.

38 (d) Every civil action brought under this section shall be brought by the Attorney
39 General upon complaint by the department, or by the district attorney or city
40 attorney in the name of the people of the State of California, and any actions relating
41 to the same violation may be joined or consolidated.

1 (e) In a civil action brought pursuant to this ~~chapter~~ section in which a temporary
2 restraining order, preliminary injunction, or permanent injunction is sought, it is not
3 necessary to allege or prove at any stage of the proceeding that irreparable damage
4 will occur if the temporary restraining order, preliminary injunction, or permanent
5 injunction is not issued, or that the remedy at law is inadequate.

6 (f) After the party seeking the injunction has met its burden of proof, the court
7 shall determine whether to issue a temporary restraining order, preliminary
8 injunction, or permanent injunction without requiring the defendant to prove that it
9 will suffer grave or irreparable harm. The court shall make the determination
10 whether to issue a temporary restraining order, preliminary injunction, or permanent
11 injunction by taking into consideration, among other things, the nature,
12 circumstance, extent, and gravity of the violation, the quantity and characteristics of
13 the substance or material involved, the extent of environmental harm caused by the
14 violation, measures taken by the defendant to remedy the violation, the relative
15 likelihood that the material or substance involved may pass into waters of the state,
16 and the harm likely to be caused to the defendant.

17 (g) The court, to the maximum extent possible, shall tailor a temporary restraining
18 order, preliminary injunction, or permanent injunction narrowly to address the
19 violation in a manner that will otherwise allow the defendant to continue business
20 operations in a lawful manner.

21 (h) All civil penalties collected pursuant to this section shall not be considered
22 fines or forfeitures as defined in Section 13003 and shall be apportioned in the
23 following manner:

24 (1) Fifty percent shall be distributed to the county treasurer of the county in which
25 the action is prosecuted. Amounts paid to the county treasurer shall be deposited in
26 the county fish and wildlife propagation fund established pursuant to Section 13100.

27 (2) Fifty percent shall be distributed to the department for deposit in the Fish and
28 Game Preservation Fund. These funds may be expended to cover the costs of legal
29 actions or for any other law enforcement purpose consistent with Section 9 of
30 Article XVI of the California Constitution.

31 (i) Except as provided in subdivision (j), in addition to any other penalty provided
32 by law, a person who violates Section 5650 is subject to a civil penalty of not more
33 than ten dollars (\$10) for each gallon or pound of material discharged. The total
34 amount of the civil penalty shall be reduced for every gallon or pound of the illegally
35 discharged material that is recovered and properly disposed of by the responsible
36 party.

37 (j) A person shall not be subject to a civil penalty imposed under this section and
38 to a civil penalty imposed pursuant to Article 9 (commencing with Section 8670.57)
39 of Chapter 7.4 of Division 1 of Title 2 of the Government Code for the same act or
40 failure to act.

41 **Comment.** Subdivision (e) of Section 5650.1 is amended to revise an overbroad reference.

1 **Fish & Game Code § 6924 (repealed). Report of determined elements of program**

2 SEC. _____. Section 6924 of the Fish and Game Code is repealed.

3 ~~6924. The department shall determine the initial elements of the program and~~
4 ~~transmit a report describing those elements to the Legislature and the Advisory~~
5 ~~Committee on Salmon and Steelhead Trout within six months of the effective date~~
6 ~~of this chapter.~~

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

8 **Fish & Game Code § 7120 (amended). Bag limits**

9 SEC. _____. Section 7120 of the Fish and Game Code is amended to read:

10 7120. It is unlawful for any person to possess more than one daily bag limit of any
11 fish, amphibian, or reptile taken under a license issued pursuant to Article 3
12 (commencing with Section 7145) unless authorized by regulations adopted by the
13 commission.

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

15 **Fish & Game Code § 7149.05 (amended). Sport fishing license**

16 SEC. _____. Section 7149.05 of the Fish and Game Code is amended to read:

17 7149.05. (a) A sport fishing license granting the privilege to take any fish, reptile,
18 or amphibia anywhere in this state for purposes other than profit shall be issued to
19 any of the following:

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

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

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

29 (4) A resident or nonresident, 16 years of age or older, for two designated days,
30 upon payment of one-half the fee set forth in paragraph (1). Notwithstanding Section
31 ~~1053~~ 1053.1, more than one single day license issued for different days may be
32 issued to, or possessed by, a person at one time.

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

35 (b) California sport fishing license validations shall be issued by authorized
36 license agents in the same manner as sport fishing licenses, and no compensation
37 shall be paid to the authorized license agent for issuing the validations except as
38 provided in Section 1055.1.

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

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

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

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

9 **Fish & Game Code § 7149.2 (amended). Lifetime sport fishing license**

10 SEC. _____. Section 7149.2 of the Fish and Game Code is amended to read:

11 7149.2. (a) In addition to Section 7149.05, the department shall issue a lifetime
12 sport fishing license under this section. A lifetime sport fishing license authorizes
13 the taking of fish, amphibians, or reptiles anywhere in this state in accordance with
14 the law for purposes other than profit for the life of the person to whom issued unless
15 revoked for a violation of this code or regulations adopted under this code. A
16 lifetime sport fishing license is valid for a one-year period from January 1 through
17 December 31 and may be renewed annually, regardless of any lapse of the license,
18 at no additional cost to the licensee. A lifetime sport fishing license is not
19 transferable. A lifetime sport fishing license does not include any special tags,
20 stamps, or fees.

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

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

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

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

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

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

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

36 (e) Upon payment of a base fee of two hundred forty-five dollars (\$245), a person
37 holding a lifetime sport fishing license shall be entitled annually to the privileges
38 afforded to a person holding a second-rod ~~stamp~~ or validation issued pursuant to
39 Section 7149.45, a sport fishing ocean enhancement ~~stamp~~ or validation issued
40 pursuant to subdivision (a) of Section 6596.1, one steelhead trout report restoration
41 card issued pursuant to Section 7380, and one salmon report card issued pursuant to

1 regulations adopted by the commission. Lifetime privileges issued pursuant to this
2 subdivision are not transferable.

3 (f) The base fees specified in this section are applicable commencing January 1,
4 2004, and shall be adjusted annually thereafter pursuant to Section 713.

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

7 **Fish & Game Code § 7232 (amended). Fish offal**

8 SEC. _____. Section 7232 of the Fish and Game Code is amended to read:

9 7232. (a) Notwithstanding Section 7121 any offal from a fish taken under a sport
10 fishing license which is delivered by the license holder to a fish canner or fish
11 processor may be processed, used, or sold by that fish canner or fish processor.

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

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

17 The section is also amended to add subdivision designations.

18 **Fish & Game Code § 7850 (amended). Activity requiring license**

19 SEC. _____. Section 7850 of the Fish and Game Code is amended to read:

20 7850. (a) Excepting persons expressly exempted under this code, no person shall
21 use or operate, or assist in using or operating, any boat, aircraft, net, trap, line, or
22 other appliance to take fish or amphibia for commercial purposes, and no person
23 shall cause to be brought ashore, any fish or amphibia at any point in the state for
24 the purpose of selling them in a fresh state or shall contribute materially to the
25 activities on board the commercial fishing vessel, unless the person holds a
26 commercial fishing license issued by the department.

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

31 (c) As used in this section, “person” ~~does not include persons who are less than~~
32 ~~16 years of age, a partnership, corporation, or association~~ means a natural person 16
33 years of age or greater. Any person, partnership, corporation, limited liability
34 company, or association may pay the fees for a license issued to any person.

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

38 **Comment.** Subdivision (c) of Section 7850 is amended to clarify the definition of the term
39 “person” as used in the section.

1 **Fish & Game Code § 8246 (amended). Compromise or dismissal of suspension or revocation**
2 **of commercial salmon fishing privilege**

3 SEC. _____. Section 8246 of the Fish and Game Code is amended to read:

4 8246. (a) At any time after notice of an order suspending or revoking of a person's
5 commercial salmon fishing privilege is issued by the commission, and before the
6 order of suspension or revocation is final, the commission may, with the agreement
7 of the person subject to the action, compromise or dismiss the action to suspend or
8 revoke the commercial salmon fishing privilege in the best interests of the state, or
9 the commission may compromise or dismiss the action with the agreement of the
10 person subject to the action on terms and conditions, which may include, but are not
11 limited to, the payment of civil damages, the reduction of a revocation to a
12 suspension for a specified period of time, or any other terms and conditions.

13 (b) The commission, after notice and opportunity for hearing, may suspend or
14 revoke the commercial fishing privilege, authorized under a license issued for the
15 purposes of Section 7850, for any violation of a term or condition of an agreement
16 to compromise or dismiss a separate suspension or revocation action that was made
17 pursuant to subdivision (a).

18 (c) If the commission orders a suspension or revocation of a person's commercial
19 salmon fishing privilege, any permit issued pursuant to this article shall be renewed
20 when the next renewal is due or the permit shall expire as provided in Section 8233.

21 (d) Subdivision ~~(b)~~ (a) does not apply if an action is brought to recover civil
22 damages under Section 2014 from the person subject to action under this section.

23 **Comment.** Subdivision (d) of Section 8246 is amended to correct an erroneous cross-reference.

24 **Fish & Game Code § 8246.2 (amended). Determination of civil damages**

25 SEC. _____. Section 8246.2 of the Fish and Game Code is amended to read:

26 8246.2. (a) The commission, in consultation with the department, shall adopt
27 regulations for the determination of civil damages provided for in subdivision ~~(b)~~
28 (a) of Section 8246 that give due consideration to the appropriateness of the civil
29 damages with respect to all of the following factors:

- 30 (1) The gravity of the violation.
- 31 (2) The good faith of the convicted licensee.
- 32 (3) The history of previous violations.
- 33 (4) The damage to the fishery.
- 34 (5) The cost of restoration of the fishery.

35 (b) Civil damages imposed under subdivision ~~(b)~~ (a) of Section 8246 shall be due
36 and payable on or before a date that is 30 days after the compromise is entered into.

37 **Comment.** Section 8246.2 is amended to correct two erroneous cross-references.

38 **Fish & Game Code § 8603 (amended). Prohibition against use of gear to take fish except as**
39 **authorized**

40 SEC. _____. Section 8625 of the Fish and Game Code is amended to read:

1 8603. It is unlawful to use or operate or assist in using or operating any net, trap,
2 line, spear, or appliance, other than in connection with angling, in taking fish, except
3 as ~~provided in this chapter or Chapter 4 of this part~~ authorized by this code.

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

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

7 SEC. _____. Section 8625 of the Fish and Game Code is amended to read:

8 8625. (a) Except as otherwise provided in this code, set gill nets and trammel nets
9 with mesh size of not less than 8½ inches may be used to take California halibut.

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

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

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

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

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

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

24 8626. (a) Notwithstanding Section 8625, and where consistent with the
25 determination made pursuant to subdivisions (b) and (c), the director may reduce
26 the minimum mesh size permitted for gill and trammel nets used to take California
27 halibut from 8½ inches to not less than 8 inches in any or all areas south of a line
28 extending 240° magnetic from the boundary line between the Counties of Los
29 Angeles and Ventura.

30 (b) If, on or before October 1, 1990, the department determines that commercial
31 landings of California halibut taken south of the line extending 240° magnetic from
32 the boundary line between the Counties of Los Angeles and Ventura in the period
33 between September 1, 1989, and August 31, 1990, decline by 10 percent or more
34 compared with landings of California halibut taken in this area during the period
35 between September 1, 1988, and August 31, 1989, the department shall assess the
36 impact of the 8½ inch minimum mesh size restriction on the California halibut
37 fishery in the area described in subdivision (a). The assessment shall include, but is
38 not limited to, an analysis of landing data, including landings of California halibut
39 in Los Angeles, Orange, and San Diego Counties, the age and size composition of
40 the catch, and the department's monitoring at sea of the gill and trammel net fishery.

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

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

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

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

10 SEC. ____. Section 11018 of the Fish and Game Code is amended to read:

11 11018. The following constitutes Fish and Game District 10:

12 The ocean waters and the tidelands of the State to high-water mark lying between
13 the southern boundary of Mendocino County and a line extending west from the
14 Pigeon Point lighthouse in San Mateo County, including the waters of Tomales Bay
15 to a line drawn from the mouth of the unnamed creek approximately 1500 feet north
16 of Tomasini Point southwesterly 218° magnetic to the mouth of the unnamed creek
17 at Shell Beach, and excluding Bodega Lagoon and all that portion of Bolinas Bay
18 lying inside of Bolinas bar, that portion of San Francisco Bay lying east of a line
19 drawn from Point Bonita to Point Lobos and all rivers, streams, and lagoons.

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

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

24 **Fish & Game Code § 12001.5 (amended). Specified punishments**

25 SEC. ____. Section 12001.5 of the Fish and Game Code is amended to read:

26 12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code,
27 if a person has been convicted of one or more offenses that was a violation of a
28 section listed in subdivision (b) separate from the offense before the court, the court
29 may order as a condition of probation upon conviction of the offense before the
30 court that is also a violation of a section listed in subdivision (b), that the person
31 attend the hunter education course designated in Section 3051 and perform
32 community service, preferably relating to natural resources if that type of
33 community service is available, as follows:

34 (1) If the person has one separate conviction, not more than 200 hours of
35 community service.

36 (2) If the person has two or more separate convictions, not more than 300 hours
37 of community service.

38 (b) This section applies to violations relating to a taking in Sections 3007, ~~3700~~
39 3700.1, 4330, and 4750, and a sale or purchase of parts of a bear in Section 4758.

40 **Comment.** Section 12001.5 is amended to update a cross-reference to a repealed code section.

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

2 SEC. _____. Section 12002 of the Fish and Game Code is amended to read:

3 12002. (a) Unless otherwise provided, the punishment for a violation of this code
4 that is a misdemeanor is a fine of not more than one thousand dollars (\$1,000),
5 imprisonment in a county jail for not more than six months, or by both that fine and
6 imprisonment.

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

10 (1) Section 1059.

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

12 (3) Section 4600.

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

14 (5) A first violation of Section 8670.

15 (6) Section 10500.

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

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

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

30 (2) This subdivision does not apply to any violation of Section 1052, 1059, 1170,
31 5650, ~~5653.9~~, 6454, 6650, or 6653.5.

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

34 **Fish & Game Code § 12002.2.1 (amended). Punishments for specified offenses**

35 SEC. _____. Section 12002.2.1 of the Fish and Game Code is amended to read:

36 12002.2.1. (a) Notwithstanding any other provision of law, a violation of any of
37 the following is an infraction, punishable by a fine of not less than fifty dollars (\$50),
38 or more than two hundred fifty dollars (\$250), for a first offense:

39 (1) Subdivision (a) of Section 6596.1.

40 (2) Subdivision (a) of Section 7149.45.

41 (3) Subdivision (b) of Section 7180.1.

42 ~~(4) Section 1.18 of Title 14 of the California Code of Regulations.~~

1 (b) If a person is convicted of a violation of any of the sections listed in
2 subdivision (a) within five years of a separate offense resulting in a conviction of a
3 violation of any of those sections, that person shall be punished by a fine of not less
4 than one hundred dollars (\$100) or more than five hundred dollars (\$500).

5 (c) If a person convicted of a violation of any of the sections listed in subdivision
6 (a) produces in court the applicable ~~sport fishing ocean enhancement stamp~~, sport
7 fishing ocean enhancement validation, ~~second rod sport fishing stamp~~, second rod
8 sport fishing validation, ~~Colorado River special use stamp~~, or Colorado River
9 special use validation, ~~Bay Delta Sport Fishing Enhancement Stamp or Bay Delta~~
10 ~~Sport Fishing Enhancement validation~~ issued pursuant to this code and valid at the
11 time of the person's arrest, and if the taking was otherwise lawful with respect to
12 season, limit, time, and area, the court may reduce the fine imposed for the violation
13 to twenty-five dollars (\$25).

14 **Comment.** Section 12002.2.1 is amended to delete obsolete material.

15 **Fish & Game Code § 12023 (amended). Specified punishments**

16 SEC. ____. Section 12023 of the Fish and Game Code is amended to read:

17 12023. (a) Notwithstanding ~~Section~~ Sections 12002 and 12007, any person who
18 violates Section 6400 through the use of an aquatic nuisance species, as defined in
19 Section 6431, is guilty of a misdemeanor, punishable by all of the following:

20 (1) Imprisonment in the county jail for not less than six months or more than one
21 year, a fine of not more than fifty thousand dollars (\$50,000) for each violation, or
22 both that imprisonment and fine.

23 (2) Revocation of all of the defendant's licenses and permits issued pursuant to
24 this code.

25 (b) A person who personally or through another violates Section 6400, through
26 the use of an aquatic nuisance species, is liable to the owner of any privately or
27 publicly owned property for any damages to that property caused by the violation.
28 A person who violates Section 6400 through the use of an aquatic nuisance species
29 shall also be liable for all monetary damages directly, indirectly, and proximately
30 caused thereby, including, but not limited to, damages to any commercial fishery,
31 sport fishery, or to the public communities which depend upon those fisheries for a
32 portion of their annual income. The Attorney General may file a civil action on
33 behalf of the fisheries or communities that are damaged as a result of the violation.
34 In addition, a private citizen who suffers damages as a result of the violation may
35 file a civil action against the violator.

36 (c) A person who allows an aquatic nuisance species to escape from ~~his or her~~
37 their property to the property of another, whether privately or publicly owned, is
38 liable to the owner of the intruded upon property for any damages caused by the
39 species.

40 (d) This section shall not apply to the placement of any live fish, any fresh or salt
41 water animal, or any aquatic plant from the discharge or exchange of ballast water
42 from any vessel as defined by Section 21 of the Harbors and Navigation Code.

1 (e) This section does not apply to the placement of an aquatic plant by a person
2 who was unaware that ~~he or she was~~ they were in possession of the plant. This
3 exception includes circumstances in which a plant becomes unknowingly and
4 temporarily attached or affixed to a boat, boat trailer, or boat motor.

5 **Comment.** Subdivision (a) of Section 12023, which specifies punishment for a violation of
6 Section 6400, is amended to reconcile its relationship with Sections 12002 and 12007, which also
7 specify punishment for a violation of Section 6400.

8 Subdivisions (c) and (e) are revised to eliminate gendered pronouns.

PROPOSED CHANGES FOR WHICH STAFF IS SEEKING FURTHER INFORMATION

The table below identifies code sections for which a textual change to a Fish and Game Code section has been proposed, but for which further information is needed before implementing the change in a draft recommendation from the Commission.

Each proposed change is accompanied by a citation to the Commission memorandum or supplement in which the proposed change was most recently presented to the Commission. Each change is further identified according to the “category” of change that best describes the item, defined in those memoranda as follows:

”Category 1” items are proposed changes that have been provisionally approved for inclusion in a recommendation, but are awaiting confirmation that the staff correctly construed commenter input.

”Category 3” items are proposed changes discussed in a Commission Note that no commenter has advised would be problematic, but none have expressly supported.

“Category 4” items are proposed changes that require further discussion between commenters and Commission staff.

Proposed Section	Existing Section	Memorandum	Page no.	Category
8915	2541	21-26 (1 st supp)	2	1
10015,10020	3004.5	21-26 (1 st supp)	3	1
10230	3040	21-26 (1 st supp)	5	1
11835	6924	21-26 (1 st supp)	6	1
13100(a)(4)	7149.05	21-26 (1 st supp)	6	1
13105(e)	7149.2	21-26 (1 st supp)	7	1
13500	7120	21-26 (1 st supp)	8	1
13705	7232	21-26 (1 st supp)	9	1
14300	8603	21-26 (1 st supp)	9	1
14500	7850	21-26 (1 st supp)	10	1
4492	2584	21-20	16	3
4900	12002.6	21-26	9	3
4934	12002.4	21-26	8	3
5332	3680	21-26	8	3
5344(b)	3801.6	21-26	8	3
5680	12002.8	21-26	9	3
5710	12002.8	21-26	9	3

Proposed Section	Existing Section	Memorandum	Page no.	Category
5720	12002.8(d)-(f)	21-26	9	3
5820	12002.8(d)-(f)	21-26	9	3
5880	8429	21-26	10	3
6000	6656	21-26	8	3
6050	12002.5	21-26	10	3
6204	12008.1(a)	21-26	10	3
6250	711.4(f)	21-26	10	3
6350	12007	21-26	10	3
6500	5653(c)	21-26	11	3
8015	2001(c)	21-26 (1 st supp)	13	3
8115	2003	21-26 (1 st supp)	13	3
8145	5500	21-26 (1 st supp)	13	3
8720	308	21-26 (1 st supp)	13	3
9565	3005(d)	21-26 (1 st supp)	14	3
10400	3049	21-26 (1 st supp)	15	3
10405	3051(a), (c)	21-26 (1 st supp)	15	3
11005	4004(e)	21-26 (1 st supp)	13	3
11010	4004(f)	21-26 (1 st supp)	13	3
11020	4004(c)	21-26 (1 st supp)	13	3
11155	4004(d)	21-26 (1 st supp)	13	3
11510	5507	21-26 (1 st supp)	13	3
13205	7151(d)	21-26 (1 st supp)	13	3
14600	7852(a), (b)	21-26 (1 st supp)	13	3
14870	7856	21-26 (1 st supp)	13	3
15105	8400	21-26 (1 st supp)	13	3
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
4874	12153	21-26	12	4
4975	8631	21-26	13	4

Proposed Section	Existing Section	Memorandum	Page no.	Category
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
8715	315.3	21-26 (1 st supp)	15	4
9560	2007	21-26 (1 st supp)	15	4
10700	1575(a)	21-26 (1 st supp)	16	4
11220	4007	21-26 (1 st supp)	16	4
12955	7180.1(b)	21-26 (1 st supp)	17	4
12960	7181.1(a)	21-26 (1 st supp)	17	4
13100	7149.05(a)(4)	21-26 (1 st supp)	17	4
13405(a)	7182.1(a)	21-26 (1 st supp)	17	4
13405(b)	7185	21-26 (1 st supp)	17	4
14615	7850(c)	21-26 (1 st supp)	17	4
15060	7892	21-26 (1 st supp)	18	4
15100	8398	21-26 (1 st supp)	18	4