

Memorandum 2021-45

Fish and Game Law: Phase One Public Comment

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

In 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.³ 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.⁴

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

Unless otherwise indicated, all statutory references in the memorandum are to the existing Fish and Game Code, or to the proposed Fish and Wildlife Code as set out in the Commission’s previously distributed tentative recommendation.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). 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 memorandum.

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 memorandum 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 37105 (Existing Section 4650)

Proposed Section 37105 would continue existing Section 4650 without substantive change. Section 4650 defines the term “wild pigs” for purposes of the chapter of the code in which that section appears.

A Note following the proposed section pointed out that the term “wild pigs” is used in several other sections of the code without definition, citing four sections in a separate article of the code as examples.⁷ The Note invited comment on whether the application of the definition should be extended to those sections. The Note also invited comment on whether the definition should be generalized to apply throughout the code.

Both entities agree the definition should be made applicable to the four existing sections identified in the Note. Both entities also believe that generalizing the definition to apply throughout the existing code would be beyond the scope of this phase of the study.

The entities suggest that this definition be made applicable to the other four sections by amending existing Section 4650 to state the application of the definition to the other sections. The staff sees an alternative that would seem more likely to advise a reader of any of the four sections of the specialized definition.

As the four sections in the other article are the only four sections in that article that use the term “wild pigs,” the staff instead proposes to add a new section near the beginning of that article that sets forth the definition, for purposes of that article.

7. Existing Sections 4181, 4181.1, 4181.2, and 4188.

The staff therefore recommends that the definition of the term “wild pigs” in existing Section 4650 be made applicable to those four sections by including the following revision in the draft recommendation:

§ 4180.2 (added). “Wild pigs”

4180.2. As used in this article, “wild pigs” has the meaning set forth in Section 4650.

Comment. Section 4180.2 is added to incorporate in the article in which the section is located the definition of the term “wild pigs” set forth in Section 4650.

Proposed Section 37220 (Existing Sections 3953(b), 4656)

Proposed Section 37220 would continue a part of existing Section 3953(b) without substantive change.

A Note following the proposed section suggested that the continued text read together with other provisions in Section 3953 rendered existing Section 4656 superfluous. The Note invited comment on whether the discontinuation of Section 4656 was appropriate.

FGC did not respond to the Note. DFW agrees that Section 4656 can be deleted as superfluous.

The staff recommends that repeal of existing Section 4656 be included in the draft recommendation, as follows:

§ 4656 (repealed). Revenue deposit and management

~~4656. Revenues received pursuant to this chapter shall be deposited in the Big Game Management Account established in Section 3953. These funds shall be available for expenditure by the department as set forth in Section 3953. The department shall maintain all internal accounting measures necessary to ensure that all restrictions on these funds are met.~~

Comment. Section 4656 is repealed as superfluous. See Section 3953.

Proposed Section 37300 (Existing Section 4651)

Proposed Section 37300 would continue existing Section 4651 without substantive change.

A Note following the proposed section suggested that the intended meaning of a phrase in the existing section directing an action “pursuant to this chapter” was unclear, as the provision in which the phrase appears seemed disconnected to

the other provisions of the referenced chapter. The Note invited comment on that issue.

FGC did not respond to the Note. DFW believes the phrase should be deleted from the existing section.

The staff recommends that a revision of existing Section 4651 be included in the draft recommendation, as follows:

§ 4651 (amended). Management plan

4651. (a) The department shall prepare a plan for the management of wild pigs. Under the plan, the status and trend of wild pig populations shall be determined and management units shall be designated within the state. The plan may establish pig management zones to address regional needs and opportunities. In preparing the plan, the department shall consider available, existing information and literature relative to wild pigs.

(b) The plan may include all of the following:

(1) The distribution and abundance of wild pigs, as described in Section 3950.

(2) A survey of range conditions.

(3) Recommendations for investigations and utilization of wild pigs.

(4) Encouraging mitigation of depredation by sport hunting pursuant to this chapter.

(5) Live trapping and relocation of wild pigs to areas suitable and accessible to mitigation of depredation, with the consent of the landowner and after prior consultation with adjacent landowners who, in the department's ~~opinion~~ opinion, may be impacted, pursuant to this chapter.

Comment. Paragraph (5) of subdivision (b) of Section 4651 is amended for clarity.

Proposed Section 37355 (Existing Section 4181.1)

Proposed Section 37355 would continue parts of existing Section 4181.1 without substantive change.

A Note following the proposed section invited comment about the inclusion in Section 4181.1(b) of a sentence providing that violation of the subdivision "is punishable pursuant to Section 12000." Section 12000, which sets forth punishments for several identified violations, does not specify a punishment for a violation of Section 4181.1(b). Regarding violation of unnamed sections, Section

12000 states only that except as otherwise provided in the code, any violation of the code is a misdemeanor.⁸

Both entities suggest the quoted sentence above should be deleted from Section 4181.1 as superfluous. Alternatively, the entities suggest different alternative formulations of the sentence. The staff believes that implementing the first suggestion agreed upon by both entities would be the most prudent course of action.

The staff recommends that a revision of existing Section 4181.1 be included in the draft recommendation, as follows:

§ 4181.1 (amended). Protection of property

4181.1. (a) Any bear that is encountered while in the act of inflicting injury to, molesting, or killing, livestock may be taken immediately by the owner of the livestock or the owner's employee if the taking is reported no later than the next working day to the department and the carcass is made available to the department.

(b) Notwithstanding Section 4652, any wild pig that is encountered while in the act of inflicting injury to, molesting, pursuing, worrying, or killing livestock or damaging or destroying, or threatening to immediately damage or destroy, land or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken immediately by the owner of the livestock, land, or property or the owner's agent or employee, or by an agent or employee of any federal, state, county, or city entity when acting in his or her official capacity. The person taking the wild pig shall report the taking no later than the next working day to the department and shall make the carcass available to the department. Unless otherwise directed by the department and notwithstanding Section 4657, the person taking a wild pig pursuant to this subdivision, or to whom the carcass of a wild pig taken pursuant to this subdivision is transferred pursuant to subdivision (c), may possess the carcass of the wild pig. The person in possession of the carcass shall make use of the carcass, which may include an arrangement for the transfer of the carcass to another person or entity, such as a nonprofit organization, without compensation. The person who arranges this transfer shall be deemed to be in compliance with Section 4304. ~~A violation of this subdivision is punishable pursuant to Section 12000.~~ It is the intent of the Legislature that nothing in this subdivision shall be interpreted to authorize a person to take wild pigs pursuant to this subdivision in violation of a state statute or regulation or a local

8. The punishment for any of these misdemeanors, if not specified otherwise in the code, is set forth in existing Section 12002.

zoning or other ordinance that is adopted pursuant to other provisions of law and that restricts the discharge of firearms.

(c) The department shall make a record of each report made pursuant to subdivision (a) or (b) and may have an employee of the department investigate the taking or cause the taking to be investigated. The person taking a wild pig shall provide information as deemed necessary by the department. Upon completion of the investigation, the investigator may, upon a finding that the requirements of this section have been met with respect to the particular bear or wild pig taken under subdivision (a) or (b), issue a written statement to the person confirming that the requirements of this section have been met. The person who took the wild pig may transfer the carcass to another person without compensation.

(d) Notwithstanding Section 4763, any part of any bear lawfully possessed pursuant to this section is subject to Section 4758.

(e) Nothing in this section prohibits federal, state, or county trappers from killing or trapping bears when the bears are killing or molesting livestock, but no iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take the bear, and no person, including employees of the state, federal, or county government, shall take bear with iron-jawed or steel-jawed or any type of metal-jawed traps.

Comment. Subdivision (b) of Section 4181.1 is amended to delete a superfluous sentence.

Proposed Section 37455(a) (Existing Section 2576)

Proposed Section 37455(a) would continue existing Section 2576 without intended substantive change.

As the existing section cross-refers to a statutory article that no longer exists, the proposed section would replace that cross-reference with cross-references to code sections from the article that appeared to have relevance to Section 2576. A Note following the proposed section invited comment on this substitution.

FGC did not respond to the Note. DFW points out that some years after the enactment of Section 2576, the Legislature renumbered the cross-referenced article, and suggests the cross-reference in Section 2576 should simply be amended to refer to the renumbered article. The staff concurs with this alternative suggestion.

The staff recommends that a revision of existing Section 2576 be included in the draft recommendation, as follows:

§ 2576 (amended). Prohibitions

2576. It is unlawful to knowingly capture for sale, transport for sale or sell wild rodents, except as provided in Article ~~4.5~~ 1 (commencing with Section 1000) of Chapter 3 of Division 2.

Comment. Section 2576 is amended to update a cross-reference to an article that was renumbered.

CHANGES THAT SHOULD NOT BE MADE

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

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

Proposed Sections 32305, 35215, 35610, 35710, 36010 (Existing Section 4152)

Proposed Sections 32305, 35215, 35610, 35710, and 36010 would each restate existing Section 4152 — as applicable to individual animals — in a manner both entities believe would cause a significant and non-beneficial substantive change in the meaning of the section. After considering the submitted comment, the staff sees no reason to dispute that contention by the entities.

The staff recommends that the proposed revision of existing Section 4152 presented in Sections 32305, 35215, 35610, 35710, and 36010 not be included in the draft recommendation.

Proposed Section 32700 (Existing Section 4700(a)(1))

Proposed Section 32700 would restate the first two sentences of existing Section 4700(a)(1) to address a matter that, as noted by both entities, has already been corrected in enacted legislation.⁹

The staff recommends that the proposed revision of existing Section 4700(a)(1) presented in Section 32700 not be included in the draft recommendation.

9. See 2015 Cal. Stat. ch. 154, § 74.

Proposed Section 37215 (Existing Section 4654)

Proposed Section 37215 would restate without intended substantive change existing Section 4654, which sets forth how the fee for a wild pig tag is to be calculated. A Note following the proposed section invited comment on whether the restatement would cause any substantive change in the meaning of the existing provision.

Both entities indicate that the restatement, which would delete subdivision (c) of the existing section, should not be made, as that subdivision remains needed for proper calculation of the fee in question. After considering the submitted comment, the staff sees no reason to dispute that contention by the entities.

The staff recommends that the proposed revision of existing Section 4654 presented in Section 37215 not be included in the draft recommendation.

CHANGES THAT SHOULD PRESUMPTIVELY BE MADE

Revisions of the proposed sections listed below were presented in Commission Notes 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. Unless further input warrants a different approach, they will be presented for approval as consent items in a future memorandum.

Proposed Section 32310(b) (Existing Section 4154); Proposed Section 33215 (Existing Section 4755); Proposed Section 33220 (Existing Section 4757); Proposed Section 34210 (Existing Section 4341); Proposed Section 34400(b), (c) (Existing Section 4301(a) (first sent.)); Proposed Section 34520 (Existing Section 457)¹⁰; Proposed Section 34525 (Existing Sections 458, 459)¹¹; Proposed Section 34600 (Existing Section 4181.5); Proposed Section 34605 (Existing Section 4188); Proposed Section 37205 (Existing Section 4654(a), (b)); Proposed Section 37365 (Existing Section 4188)

The proposed sections listed above would each restate some or all of the corresponding existing sections to make those sections easier to understand, without any intended substantive change in meaning.

10. The presentation of this revision for approval in a later memorandum will be preceded by consideration of an additional revision to this section proposed by FGC.

11. See also additional discussion of proposed Section 34525 in the part of this memorandum entitled "No Further Action Recommended."

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.

At this time, the staff 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.

Proposed Section 34110 (Existing Section 4032)

Proposed Section 34110 would restate existing Section 4032 to make the section easier to understand, without any intended substantive change in meaning.

Both entities agree that the restatement would not cause a substantive change to the meaning of the section, with one possible caveat — the proposed substitution of the word “must” for the word “shall.” While neither entity argues that substitution would change the meaning of the section, FGC suggests it “does not appear to be a clear benefit,” and DFW advises that in the experience of its wildlife officers, courts prefer “shall.”

The staff recommends using “must” instead of “shall” in the restatement of existing Section 4032 set forth in proposed Section 34110. The staff further recommends that the restatement as so revised be treated as presumptively correct, and absent further objection from a commenter, presented for approval as a consent item in a future memorandum.

FURTHER INPUT REQUIRED

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

Proposed Section 33450(b) (Existing Section 4759)

Proposed Section 33450(b) would restate the second and third sentences of existing Section 4759, with an intended non-substantive clarification of an ambiguity in the third sentence.

A Note following the proposed section inquired whether the restatement would cause any substantive change.

FGC agrees there is an ambiguity in the third sentence of the existing section, but is unsure if the proposed clarification would create a significant substantive change. DFW believes the clarification would cause a non-beneficial and significant substantive change, but does not offer a substitute cure for the existing ambiguity.

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 Sections 33520, 33710, 35000, 36015, 37360 (Existing Section 4181(a))

Proposed Sections 33520, 33710, 35000, 36015, and 37360 would restate existing Section 4181(a) with no intended substantive change, except to limit the application of the section to distinct animals based on the proposed recodification of the existing code. A Note following the proposed section inquired whether the restatement would cause any substantive change in the meaning of the provision.

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 can be easily remedied, but the staff would like to ensure neither entity has any other concern about the restatement.

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 34515 (Existing Section 456, first and third sentences)

Proposed Section 34515 would restate without intended substantive change the first and third sentences of existing Section 456, which require a specified biennial report to be submitted to the Legislature by DFW. A Note following the proposed section invited comment on a previous suggestion made by DFW that the report required by the section is obsolete.

A second Note invited comment on whether the restatement would cause any substantive change.

DFW repeats its assertion that the report is obsolete, and does not address whether the restatement would cause any substantive change. FGC suggests that the report may continue to have value, and believes the restatement would not substantively change the meaning of the restated text.

The staff recommends that it further discuss this 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 34530(a)-(d) (Existing Section 460)

Proposed Section 34530(a)-(d) would restate existing Section 460 without any intended substantive change. A Note following the proposed section invited comment on whether the restatement would cause any substantive change in the meaning of the restated text.

FGC did not comment on the Note. DFW advises the restatement would cause a significant substantive change that is not beneficial, as a sentence of the existing section is missing from the restatement.

As the sentence was inadvertently excluded from the restatement, and the staff believes it could be relatively easily incorporated in the restatement, it recommends that it further discuss a revised 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 34865 (Existing Section 3953(b))

Proposed Section 34865 would continue the part of the first sentence of existing Section 3953(b) applicable to elk, without substantive change. A Note following the proposed section invited comment on whether the continued provision could be deleted from the code as redundant, in light of what appears to be the same language in proposed Section 34850(c) and (d).

FGC did not comment. DFW suggests the provision is not redundant, but also indicated it did not understand the rationale for the contrary suggestion in the Note.

As the staff continues to believe there may be some redundancy between the continued text and other provisions of the existing code, it recommends that it further discuss the Note 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 memorandum addresses proposed revisions for which the staff has concluded, after considering public comment, there is not sufficient evidence of a problem to justify making the proposed change.

This entire section of the memorandum will be treated as a consent item. Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to approve the staff's recommendation that the matters discussed below be set aside without further action being taken.

Proposed Sections 33210 (Existing Section 4753); Proposed Section 34205 (Existing Section 4336)

The two proposed sections listed above would continue the corresponding existing sections without substantive change. Both sections relate to the use of an issued hunting tag relating to a specific animal, and each refer in some way to "harvesting" an animal. A Note following the first two proposed sections inquired whether a more common term might be substituted for the word "harvesting" as used in the existing sections.

After considering responsive comment from both entities, it appears no clarification is needed.

Proposed Section 33515 (Existing Section 3960.2)

Proposed Section 33515 would continue existing Section 3960.2 without substantive change. A Note following the proposed section inquired about the possible need to add a provision that would clarify a term referenced in the existing section and other sections using the term.

After considering responsive comment from both entities, it appears no additional provision is needed.

Proposed Section 34400 (Existing Section 4301)

Proposed Section 34400(b) and (c) would restate with no intended substantive change the first sentence of existing Section 4301, a section that regulates the sale, purchase, transport for purpose of sale, and importation of deer meat.

A Note following the proposed section invited comment on whether the restatement would cause any substantive change in the meaning of the restated text. Both entities indicated they do not believe the restatement would cause a substantive change.¹²

A second Note following the proposed section invited comment relating to making the definition of the term “deer” used in the existing section applicable to other sections.

After considering responsive comment from both entities, the staff agrees that extended application would be unwarranted.

Proposed Section 34525 (Existing Sections 458 and 459)

Proposed Section 34525 would restate with no intended substantive change existing Sections 458 and 459.

A Note following the proposed section invited comment on whether the restatement would cause any substantive change in the meaning of the restated text. FGC did not comment, and DFW indicated its belief that the restatement would not cause any substantive change.¹³

A second Note following the proposed section pointed out that existing Section 459 requires the transmission of a resolution to DFW by a county board of supervisors with no further specification about that transmission, and inquired whether those matters should be clarified. FGC did not comment, but DFW advises that while perhaps helpful, any clarification would be a substantive change to the section, and potentially controversial.

PURELY INFORMATIONAL MATTERS

The tentative recommendation included explanatory Notes, relating to the provisions listed below or inquiring about a possible revision of a provision but not proposing any change. Where there was no response to these Notes, or the response indicates the absence of any need for reform, those issues will not be discussed further (unless a Commissioner raises an issue).

12. See additional discussion of proposed Section 34400(b) and (c) in the part of this memorandum entitled “Changes That Should Presumptively Be Made.”

13. See additional discussion of proposed Section 34525 in the part of this memorandum entitled “Changes That Should Presumptively Be Made.”

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

- **Proposed Section 32950 (Existing Section 331)**
- **Proposed Section 33000 (Existing Section 4751)**
- **Proposed Sections 33600, 33950 (Existing Section 3960.4)**
- **Proposed Section 34530(e) (Existing Section 451)**
- **Proposed Section 34850 (Existing Section 332)**
- **Proposed Section 35305 (no corresponding existing section)**
- **Proposed Section 35315 (Existing Section 4808)**
- **Proposed Section 35900 (Existing Section 4902)**

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 Memorandum 2021-45.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
32305	4152	<p>FGC notes that sec. 4152(c), related to bobcats, was added after CLRC review by AB 1254, Statutes of 2019, Chapter 766, effective January 1, 2020. FGC is not commenting on the proposed division of the different species into different sections as reorganizing the Fish and Game Code is outside the scope of the current review.</p> <p>CLRC note (1): FGC believes changing the language to use "not prohibited" is a significant substantive change in that it does not improve clarity and is not plainly beneficial.</p> <p>CLRC note (2): FGC believes that "immediate possession" and "possession" have different meanings in common usage and cannot be used interchangeably.</p>	<p>Two comments: (1) CDFW believes that the change in sec. 4152 from take "in accordance with this code and regulations" to take "in any manner not prohibited by this code or regulations" is a significant substantive change in the meaning of this section that is not beneficial; the use of the phrase "not prohibited" does not improve clarity. (2) CDFW does not support amending sec. 4152 to change "immediate possession" to "possession". They have different meanings in common usage and is an important distinction for wildlife officers working in the field. The Commission should also note that sec. 4152(c) was added by Stats. 2019, Ch. 766, sec. 2 (AB 1254) effective Jan. 1, 2020.</p>	2
32310(b)	4154	No comment	CDFW believes that the restatement of sec. 4154 would not cause any substantive change in the meaning of that section.	3
32700	4700(a)(1)	<p>FGC believes that the CLRC note misquotes the first sentence of existing sec. 4700(a)(1); the section exempts take that is authorized since it includes "Except as provided in this section" in the first sentence. Related, FGC also believes sec. 4700(b)(2) accurately states the law with regard to the exception for Nelson bighorn sheep.</p>	<p>CDFW believes that existing sec. 4700 properly exempts take that is authorized since it includes "this section" in the first sentence, not the language quoted in the Note. CDFW believes that the existing language in sec. 4700 accurately states the law relating to Nelson bighorn sheep.</p>	2
32950	331	No comment	Note is informational only. No comment.	6
33210	4753	<p>FGC believes that "harvest" is a commonly used euphemism for kill; the sporting community understands the common use of this term and, therefore, it is not essential that it be changed.</p>	<p>"Harvest" is a commonly used term that means reducing to bag. The sporting community understands the common use of this term and, therefore, it does not need to be changed.</p>	5

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
33215	4755	FGC believes that the restatement of sec. 4755 does not cause a substantive change in the meaning of that section. FGC also notes that subdivision (c) of sec. 708.12, Title 14, California Code of Regulations, supersedes Fish and Game Code sec. 4755.	CDFW believes that the restatement of sec. 4755 does not cause a substantive change in the meaning of that section.	3
33220	4757	FGC believes that the proposed restatement of sec. 4757 does not cause a substantive change in the meaning of that section.	CDFW believes that the restatement of sec. 4757 does not cause a substantive change in the meaning of that section.	3
33300	4751	No comment	Note is informational only. No comment.	6
33450(b)	4759	FGC believes that the last sentence of sec. 4759 is ambiguous with regard to whether a receipt must be retained after the period stipulated by sec. 4755; therefore, it is not clear whether the the proposed restatement causes a significant substantive change.	CDFW believes that the restatement of the last sentence of sec. 4759 causes a significant substantive change in the section that is not beneficial because existing law requires obtaining and retaining a receipt. The restatement makes that requirement conditional depending on when the donation occurs.	4
33515	3960.2	FGC believes that Fish and Game Code sec. 4181 provides authority for the department to issue revocable permits under regulations adopted by FGC.	Sec. 4181 of the code provides authority for the department to issue depredation permits and the criteria for issuing them.	5
33520	4181(a)	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 gang of elk, whereas the restatement suggests that permits must be issued for individual elk; this would be a significant substantive change in the meaning of the section but 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 substantive change in the meaning of the section that is not beneficial and would be controversial because under current law a depredation permit can be issued for multiple animals (e.g. flock of turkeys, herd of deer) by the use of the term "animals". The restatement uses the term "the bear" suggesting that permits must be issued for individual bears. Further, CDFW has no comment at this time about the changes to divide 4181 by species. The latter is beyond the scope of this r	4
33600	3960.4	No comment	CDFW believes that the restatement of sec. 3960.4 will not cause a substantive change in the meaning of that section although has no comment at this time about the change to the section to remove bobcat. The latter is beyond the scope of this review.	6
33710	4181(a)	FGC believes that the proposed restatement of sec. 4181 is not beneficial in that current law allows a	CDFW generally believes that the restatement of sec. 4181(a) causes a significant substantive change in the	4

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
		depredation permit to be issued for a colony of beavers, whereas the restatement suggests that permits must be issued for individual beavers; this would be a significant substantive change in the meaning of the section but 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.	meaning of the section that is 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 beaver" suggesting that permits must be issued for individual beavers. 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.	
33950	3960.4 (b)-(d)	No comment	CDFW believes that the restatement of sec. 3960.4 will not cause a substantive change in the meaning of that section although has no comment at this time about the change to the section to remove bear. The latter is beyond the scope of this review.	6
34110	4302	FGC believes that the proposed restatement of sec. 4302 will not cause a substantive change in the meaning of the section. However, there does not appear to be a clear benefit to changing "shall" to "must."	Except for the change in the word "shall" to "must", CDFW believes that the restatement of sec. 4302 will not cause a substantive change in the meaning of that section. In the experience of CDFW's wildlife officers, courts prefer "shall".	3
34205	4336	FGC believes that "harvest" is a commonly used euphemism for kill; the sporting community understands the common use of this term and, therefore, it is not essential that it be changed.	"Harvest" is a commonly used term meaning reducing to bag. The sporting community understands the common use of this term and, therefore, it does not need to be changed.	5
34210	4341	FGC believes that the restatement of sec. 4341 does not cause a substantive change in the meaning of that section.	CDFW believes that the restatement of sec. 4341 does not cause a substantive change in the meaning of that section.	3
34400	4301	CLRC note (1): FGC believes that the proposed restatement of the first sentence of sec. 4301(a) does not cause a substantive change in the meaning of that section. CLRC note (2): The definition of "deer" in sec. 4301(b) is only applicable to sec. 4301; applying the definition to the code as a whole would have unintended consequences and could be controversial where current use of the term "deer" does not include other species in the family Cervidae; hence, CLRC's proposal would be a significant substantive change.	Two comments: (1) CDFW believes that the restatement of the first sentence of sec. 4301(a) does not cause a substantive change in the meaning of that section. (2) CDFW does not believe that the definition of "deer" in section 4301(b) should be applied to the code as a whole by being added to the general definition section since by its terms, it is just meant to apply "to this section". This is important because the family Cervidae includes animals other than deer and may have unintended consequences by being applied more broadly.	3, 5
34515(a)	456, 1 st sent	FGC believes that while restoring California's deer herds may have	Two comments: (1) & (2) CDFW continues to believe the report required	4

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		been achieved (hence, leading to a conclusion that the subject report may be obsolete), maintenance is ongoing into perpetuity; as such, the subject report may still be valuable and should be reassessed in the context of the current management regime and status of deer.	by sec. 456 should be deleted because it is obsolete.	
34515(b)	456, 3 rd sent	FGC believes that the proposed restatement of sec. 456 does not cause any substantive change in the meaning.	CDFW continues to believe that the report required by sec. 456 should be deleted because it is obsolete.	4
34520		FGC believes the proposed restatement does not cause any substantive change in the meaning of sec. 457; however, it does recommend that proposed subdivisions (b)(1-4) be reordered such that (b)(3), (4), (1) and (2) become (b)(1-4), respectively.	The restatement does not cause a change in the meaning of this section.	3
34525	458, 459	No comment	Two comments: (1) CDFW believes that the restatement of secs. 458 and 459 would not cause a substantive change in the meanings of those sections. (2) It would be a substantive change in the code to specify the manner of notice from the Board of Supervisors. That said, clarifying the manner of notice would be helpful but could be controversial.	3, 5
34530	451, 460	No comment	Two comments: (1) CDFW believes that the restatement causes a significant substantive change in the section that is not beneficial and could be controversial because it deletes the requirement in the sixth sentence in sec. 460 that CDFW make recommendations about antlerless deer hunts. (2) This comment is beyond the scope of the review at this time since it relates to relocating sec. 451.	4, 6
34600	4181.5	FGC believes that the proposed restatement of sec. 4181.5 will not cause a substantive change in the meaning of that section.	CDFW believes the restatement of sec. 4181.5 will not cause a substantive change in the meaning of that section.	3
34605	4188	FGC believes that the 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 believes that the restatement of sec. 4188 will not cause a substantive change in the meaning of the section except it does not agree with the removal of wild pigs and wild turkeys from this section.	3

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34850	332	No comment	Note is informational only. No comment.	6
34865	3953(b)	No comment	Sec. 3953(b) cannot be deleted as redundant. Among other things, it covers fundraising tags and how the money from them will be divided. The Note is unclear because it says "Compare proposed Section 4850(c) and (d)" but those are enforcement sections.	4
35000	4181(a)	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 sloth of bears, whereas the restatement suggests that permits must be issued for individual bears; this would be a significant substantive change in the meaning of the section but 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 substantive change in the meaning of the section that is not beneficial and could be controversial because under current law a depredation permit can be issued for multiple animals (e.g. flock of turkeys, herd of deer) by the use of the term "animals". The restatement uses the term "the elk" suggesting that permits must be issued for individual elk. Further, CDFW has no comment at this time about the changes to divide sec. 4181 by species. The latter is beyond the scope of this review.	4
35215	4152	<p>FGC notes that sec. 4152(c), related to bobcats, was added after CLRC review by AB 1254, Statutes of 2019, Chapter 766, effective January 1, 2020. FGC is not commenting on the proposed division of the different species into different sections as reorganizing the Fish and Game Code is outside the scope of the current review.</p> <p>CLRC note (1): FGC believes changing the language to use "not prohibited" is a significant substantive change in that it does not improve clarity and is not plainly beneficial.</p> <p>CLRC note (2): FGC believes that "immediate possession" and "possession" have different meanings in common usage and cannot be used interchangeably.</p>	Two comments: (1) CDFW believes that the change in sec. 4152 from take "in accordance with this code and regulations" to take "in any manner not prohibited by this code or regulations" is a significant substantive change in the meaning of this section that is not beneficial; "not prohibited" does not improve clarity. (2) CDFW does not support amending sec. 4152 to change "immediate possession" to "possession". They have different meanings in common usage and as applied by wildlife officers in the field.	2
35305	new	No comment	Note is informational only. CDFW has no comment on the Commission's authority to change statutes that were enacted by initiative.	6
35315	4808	FGC believes the note to be misplaced since it relates to sec. 3950.1.	Note is informational only and appears to be misplaced since it relates to sec. 3950.1. CDFW has no comment on the	6

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
			Commission's authority to change statutes that were enacted by initiative.	
35610	4152	<p>FGC notes that sec. 4152(c), related to bobcats, was added after CLRC review by AB 1254, Statutes of 2019, Chapter 766, effective January 1, 2020. FGC is not commenting on the proposed division of the different species into different sections as reorganizing the Fish and Game Code is outside the scope of the current review.</p> <p>CLRC note (1): FGC believes changing the language to use "not prohibited" is a significant substantive change in that it does not improve clarity and is not plainly beneficial.</p> <p>CLRC note (2): FGC believes that "immediate possession" and "possession" have different meanings in common usage and cannot be used interchangeably.</p>	<p>Two comments: (1) CDFW believes that the change in sec. 4152 from take "in accordance with this code and regulations" to take "in any manner not prohibited by this code or regulations" is a significant substantive change in the meaning of this section that is not beneficial; "not prohibited" does not improve clarity. (2) CDFW does not support amending sec. 4152 to change "immediate possession" to "possession". They have different meanings in common usage and as applied by wildlife officers in the field.</p>	2
35710	4152	<p>FGC notes that sec. 4152(c), related to bobcats, was added after CLRC review by AB 1254, Statutes of 2019, Chapter 766, effective January 1, 2020. FGC is not commenting on the proposed division of the different species into different sections as reorganizing the Fish and Game Code is outside the scope of the current review.</p> <p>CLRC note (1): FGC believes changing the language to use "not prohibited" is a significant substantive change in that it does not improve clarity and is not plainly beneficial.</p> <p>CLRC note (2): FGC believes that "immediate possession" and "possession" have different meanings in common usage and cannot be used interchangeably.</p>	<p>Two comments: (1) CDFW believes that the change in sec. 4152 from take "in accordance with this code and regulations" to take "in any manner not prohibited by this code or regulations" is a significant substantive change in the meaning of this section that is not beneficial; "not prohibited" does not improve clarity. (2) CDFW does not support amending sec. 4152 to change "immediate possession" to "possession". They have different meanings in common usage and as applied by wildlife officers in the field.</p>	2
35900	4902	No comment	This Note is informational only. No comment.	6
36010	4152	<p>FGC notes that sec. 4152(c), related to bobcats, was added after CLRC review by AB 1254, Statutes of 2019, Chapter 766, effective January 1, 2020. FGC is not commenting on the proposed division of the different</p>	<p>Two comments: (1) CDFW believes that the change in sec. 4152 from take "in accordance with this code and regulations" to take "in any manner not prohibited by this code or regulations" is a significant substantive change in the</p>	2

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
		<p>species into different sections as reorganizing the Fish and Game Code is outside the scope of the current review.</p> <p>CLRC note (1): FGC believes changing the language to use "not prohibited" is a significant substantive change in that it does not improve clarity and is not plainly beneficial.</p> <p>CLRC note (2): FGC believes that "immediate possession" and "possession" have different meanings in common usage and cannot be used interchangeably.</p>	<p>meaning of this section that is not beneficial; "not prohibited" does not improve clarity. (2) CDFW does not support amending sec. 4152 to change "immediate possession" to "possession". They have different meanings in common usage and as applied by wildlife officers in the field.</p>	
36015	4181(a)	<p>FGC believes that the proposed restatement of sec. 4181 does not cause a substantive change in the meaning of the section.</p> <p>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.</p>	<p>CDFW generally agrees that the restatement of sec. 4181 doesn't cause a substantive change in the meaning of the section, although at this time is has no comment on the proposal to divide 4181 up by species. That is beyond the scope of this review.</p>	4
37105	4650	<p>FGC believes that the definition of "wild pigs" in sec. 4650 should be made applicable to secs. 4181, 4181.1, 4181.2 and 4188 by amending the reference to "chapter." FGC has no comment about the proposal to relocate the definition as reorganization of the Fish and Game Code is outside the scope of the current review.</p>	<p>CDFW agrees that the definition of "wild pigs" in sec. 4650 should be made applicable to secs. 4181, 4181.1, 4181.2, and 4188 by amending the reference to "chapter". CDFW has no comment at this time on the relocation of the definition because it is beyond the scope of this review.</p>	1
37205	4654(a), (b)	<p>FGC believes that the proposed restatement of secs. 4654(a) and (b) does not cause a substantive change to those subsections, though it is not clear how changing "procure" to "obtain" provides any greater clarity or understanding. See related comment about Fish and Game Code sec. 4332 and use of the word "procure."</p> <p>FGC has no comment about dividing sec. 4654 into two sections as reorganization of the Fish and Game Code is outside the scope of the current review.</p>	<p>CDFW agrees that the restatement of secs. 4654(a) and (b) does not cause a substantive change in those subsections. See below for comment on sec. 4654(c).</p>	3
37215	4654(c)	<p>FGC believes that the CLRC proposal to delete subdivision (c) of sec. 4654 regarding base fees would have unintended consequences and therefore is a significant substantive</p>	<p>CDFW disagrees that sec. 4654(c) regarding base fees should be deleted. The reference to when the indexing is to begin (2004) is needed for accounting purposes. CDFW has no comment at</p>	2

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
		change; the reference to when indexing began (2004) is essential for accounting purposes. FGC has no comment about dividing sec. 4654 into two sections as reorganization of the Fish and Game Code is outside the scope of the current review.	this time on splitting sec. 4654 up into two sections.	
37220	4656	No comment	CDFW agrees that sec. 4656 can be deleted since it is superfluous because of sec. 3953.	1
37300	4651	No comment	CDFW believes that the language in sec. 4651(b)(5) "pursuant to this chapter" should be deleted.	1
37355	4181.1(b)	Sec. 4181(c) refers to subdivision (b) of sec. 4181.1.FGC believes that the sentence in subsection 4181.1(b) regarding sec. 12000 could be deleted since, by its terms, sec. 12000 applies to all violations of the code unless otherwise specified; it could also be amended to read "Pursuant to sec. 12000, a violation of this subsection is a misdemeanor."	The sentence in sec. 4181.1(b) regarding sec. 12000 should be deleted since by its terms, sec. 12000 applies to all violations of the code unless otherwise specified. The sentence is therefore redundant. The sentence could also be restated: "A violation of this subdivision is a misdemeanor pursuant to sec. 12000."	1
37360	4181(a)	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 sounder of pigs, whereas the restatement suggests that permits must be issued for individual pigs; this would be a significant substantive change in the meaning of the section but 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 not beneficial and would be controversial because under current law a depredation permit can be issued for multiple animals (e.g. flock of turkeys, herd of deer) by the use of the term "animals". The restatement uses the term "the wild pig" suggesting that permits must be issued for individual pigs. Further, CDFW has no comment at this time about the changes to divide sec. 4181 by species. The latter is beyond the scope of this review.	4
37365	4188	FGC believes that the 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.	3
37455(a)	2576	No comment	CDFW believes it is appropriate to change the reference in sec. 2576 from repealed Article "1.5" to Article "1". Per the legislative history, Article 1.5 was renumbered to Article 1. CDFW does not agree that specific sections of the code should be inserted in sec. 2576 assuming what the Legislature	1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
			intended to include/exclude from this section.	