

## Memorandum 2021-49

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

---

In this study, the Commission<sup>1</sup> has been directed by the Legislature to consider revision of the Fish and Game Code in order to make technical improvements to that law, without making any significant substantive change to the effect of the law.<sup>2</sup>

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

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

Unless otherwise indicated, all statutory references in the 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](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See 2012 Cal. Stat. res. ch.108 (ACR 98 (Wagner)).

3. See Memorandum 2018-67 and its First Supplement; Minutes (Dec. 2018), p. 10.

4. See Memorandum 2021-11; Minutes (Feb. 2021), p. 5. “Phase Two” would involve consideration of proposed organizational changes to the existing law.

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

6. The comments are reproduced in an Exhibit to this 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 Sections 38760, 39055, 44765 (Existing Section 8623)**

Proposed Sections 38760, 39055, and 44765 would continue existing Section 8623 without substantive change.

The proposed sections, each applying the existing provision to different types of fish, would revise what the Commission believed to be an unintended and overbroad exception to the application of the section set forth in the section's last subdivision. A Note following each of the proposed sections invited comment on whether the narrowing of the exception would be problematic.

Both entities indicate that the stated exception can be amended as proposed by the Commission.

**The staff recommends that the following revision of existing Section 8623 be included in the draft recommendation:**

#### **§ 8623 (amended). Use of purse seines or round haul nets**

8623. (a) It is unlawful to use any purse seine or round haul net to take yellowtail, barracuda, or white sea bass.

(b) It is unlawful to possess any yellowtail, barracuda, or white sea bass, except those taken south of the international boundary between the United States and Mexico, and imported into the state under regulations of the commission as provided in Section 2362, on any boat carrying or using any purse seine or round haul net, including, but not limited to, a bait net as described in Section 8780.

(c) Gill nets with meshes of a minimum length of 3<sup>1</sup>/<sub>2</sub> inches may be used to take yellowtail and barracuda.

(d) Gill nets with meshes of a minimum length of six inches may be used to take white sea bass; however, during the period from June 16 to March 14, inclusive, not more than 20 percent by number of a

load of fish may be white seabass 28 inches or more in total length, up to a maximum of 10 white seabass per load, if taken in gill nets or trammel nets with meshes from 3½ to 6 inches in length.

(e) Notwithstanding ~~the provisions of this section~~ subdivision (b), the department may issue permits to hook and line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of taking bait for their own use only.

**Comment.** Section 8623 is amended to clarify the application of subdivision (e) of the section.

### **Proposed Section 39955 (Existing Section 8494(b))**

Proposed Section 39955 would continue existing Section 8494(b) without substantive change.

A Note following the proposed section suggested that the intended meaning of some of the text in the section was unclear, and invited comment on whether the text was intended to be understood as suggested in the Note.

Both entities agreed that the meaning of the text at issue could be more clear, and both agreed that the intended meaning was as suggested by the Commission.

**The staff recommends that the following revision of existing Section 8494 be included in the draft recommendation:**

#### **§ 8494 (amended). Halibut bottom trawl vessel permits**

8494. (a) Any vessel using bottom trawl gear in state-managed halibut fisheries, as described in subdivision (a) of Section 8841, shall possess a valid California halibut bottom trawl vessel permit that has not been suspended or revoked and that is issued by the department authorizing the use of trawl gear by that vessel for the take of California halibut.

(b) A California halibut bottom trawl vessel permit shall be issued annually, and commencing with the 2006 permit year, and an applicant shall have been shall be issued only to a person who had been issued a California halibut bottom trawl vessel permit in the immediately preceding permit year.

(c) Permits issued pursuant to this section may be transferred only if at least one of the following occur:

(1) The commission adopts a restricted access program for the fishery that is consistent with the commission's policies regarding restricted access to commercial fisheries.

(2) (A) Before the implementation of a halibut trawl restricted access program, the department may consider requests from a vessel permitholder or the permitholder's conservator or estate representative, as applicable, to transfer a vessel permit to a vessel consistent with the requirements of subparagraph (B) or (C). The

department may request information that it determines is reasonably necessary from the permitholder or the permitholder's conservator or heirs or estate for the purpose of verifying statements in the request before authorizing the transfer of the permit.

(B) The department may approve the transfer of a California halibut bottom trawl vessel permit to a replacement vessel if all of the following requirements are met:

(i) In the form of a notarized application, the permitholder submits to the department a request for the transfer of a California halibut bottom trawl vessel permit to another vessel owned by the permitholder.

(ii) The permitholder provides a current United States Coast Guard certificate of documentation or vessel marine survey to the department for the permitted vessel and replacement vessel.

(iii) Based on the information provided pursuant to clause (ii), the department determines that the replacement vessel is equal to or less than the capacity of the permitted vessel.

(iv) The department determines the California halibut bottom trawl vessel permit for the permitted vessel is valid and has not been suspended or revoked.

(v) If applicable, the department receives written confirmation from the replacement vessel's owner or authorized agent, or mortgager, of the vessel's participation in the transfer of the California halibut bottom trawl vessel permit.

(vi) The replacement vessel is registered with the department pursuant to Section 7881 at the time the application is submitted pursuant to clause (i).

(C) The department may approve the transfer of a California halibut bottom trawl vessel permit to another person if all of the following requirements are met:

(i) In the form of a notarized application, the permitholder or the permitholder's conservator or estate submits to the department a request to transfer a California halibut bottom trawl vessel permit to another person.

(ii) If the permitholder's estate submits a request pursuant to clause (i), the estate submits the notarized application to the department within one year of the death of the permitholder as listed on the death certificate.

(iii) A current United States Coast Guard certificate of documentation or vessel marine survey is provided to the department for the permitted vessel and vessel to be used by the proposed transferee.

(iv) Based on the information provided pursuant to clause (iii), the department determines that the vessel to be used by the proposed transferee is equal to or less than the capacity of the permitted vessel.

(v) The proposed transferee meets both of the following requirements:

(I) The person has a valid commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked.

(II) The person is the owner of a commercial fishing vessel that is registered with the department pursuant to Section 7881 and that registration has not been suspended or revoked.

(vi) The permit for the permitted vessel is current, and the permit holder or the permit holder's conservator or estate submitting the application is responsible for any renewal of the permit that becomes due during the application processing period.

(vii) Under penalty of perjury, the permit holder or the permit holder's conservator or estate signs the application for transfer and certifies that the information included is true to the best of the permit holder's information and belief.

(D) Any applicant who is denied transfer pursuant to this paragraph may appeal the denial in writing describing the basis for the appeal to the commission within 60 days from the date of the department's decision.

(d) The commission shall establish California halibut bottom trawl vessel permit fees based on the recommendations of the department and utilizing the guidelines outlined in subdivision (b) of Section 711 to cover the costs of administering this section. Before the adoption of a restricted access program pursuant to subdivision (c), fees may not exceed one thousand dollars (\$1,000) per permit.

(e) Individuals holding a federal groundfish trawl permit may retain and land up to 150 pounds of California halibut per trip without a California halibut trawl permit in accordance with federal and state regulations, including, but not limited to, regulations developed under a halibut fishery management plan.

(f) This section shall become inoperative upon the adoption by the commission of a halibut fishery management plan in accordance with the requirements of Part 1.7 (commencing with Section 7050).

(g) The commission may adopt regulations to implement this section.

**Comment.** Subdivision (b) of Section 8494 is amended to clarify its meaning.

### **Proposed Section 41735 (Existing Sections 8233.5 and 8237)**

Proposed Section 41735 would combine and restate existing Sections 8233.5 and 8237, two sections relating to commercial salmon vessels, with no intended substantive change.

A Note following the proposed section invited comment on whether the proposed combining and restatement would cause any substantive change in the

meaning of the provisions. DFW agrees that the existing sections can be combined; both entities believe that the combination and restatement would not cause any substantive change in the meaning of either section.

**The staff recommends that the following revision of existing Section 8233.5 and repeal of Section 8237 be included in the draft recommendation:**

**§ 8233.5 (amended). Change of ownership of permitted vessel**

8233.5. ~~(a) Except as otherwise provided in this article, the department shall change the designation of the holder of a permit; and with it shall go all rights, privileges, and obligations of a permit holder, including rights of renewal, upon receipt of a notice of change of ownership to a new owner of a permitted vessel. A permit changed pursuant to this section is valid for the permit year during which it is issued. to the new owner of a permitted vessel upon receipt of a notice of change of ownership of the permitted vessel, whether the change of ownership is by contract, by operation of law, or otherwise.~~

~~(b) The permit shall not be transferred to any other vessel, except by the issuance of a permit for use of the replacement vessel pursuant to subdivision (c) and Sections 8239 to 8241, inclusive.~~

~~(c) The owner of the permitted vessel may seek to retire the permitted vessel from the commercial salmon fishery and apply for transfer of the permit, to be issued pursuant to Section 8241, for use of a replacement vessel.~~

~~(d) A permit changed pursuant to this section is valid for the permit year during which it is issued.~~

~~(e) Upon change of the designation of the holder of the permit, all rights, privileges, and obligations of a permit holder, including rights of renewal, are transferred to the new owner of a permitted vessel.~~

**Comment.** Section 8233.5 is amended to incorporate the provisions of former Section 8237.

**§ 8237 (repealed). Use of vessel permit after change of ownership**

~~8237. (a) The department shall change the designation of the holder of a permit to the new owner of a permitted vessel upon change of ownership of the permitted vessel, whether the change of ownership is by contract, by operation of law, or otherwise.~~

~~(b) The permit shall not be transferred to any other vessel, except by the issuance of a permit for use of the replacement vessel pursuant to subdivision (c) and Sections 8239 to 8241, inclusive.~~

~~(c) The owner of the permitted vessel may seek to retire the permitted vessel from the commercial salmon fishery and apply for~~

transfer of the permit, to be issued pursuant to Section 8241, for use of a replacement vessel.

**Comment.** Section 8237 is repealed. Its provisions are incorporated in Section 8233.5.

### **Proposed Section 43250 (Existing Section 10000)**

Proposed Section 43250 would continue existing Section 10000 without substantive change.

Existing Section 10000(b) authorizes specified conduct relating to sturgeon eggs “if, and only if, the eggs are lawfully taken or lawfully possessed pursuant to Section 7230 or 8371.” However, in 2007, text in Section 8371 that related to the taking or possession of sturgeon eggs was deleted from that section, and added to existing Section 7370.<sup>7</sup> The tentative recommendation therefore proposed to revise the continuation of existing Section 10000 to cross-refer to the continuation of Section 7370, rather than the continuation of existing Section 8371.

A Note following the proposed section invited comment on this substitution. FGC did not comment on this Note. DFW supports the updating of the cross-reference.

**The staff recommends that a revision of existing Section 10000 be included in the draft recommendation, as follows:**

#### **§ 10000 (amended). Required license**

10000. (a) Every person engaged in the business of canning, curing, preserving, packing, or otherwise processing, or dealing at wholesale in, the eggs of sturgeon for human consumption shall obtain a sturgeon egg processing license from the department for that purpose. The license required by this division is in addition to any other license, permit, or other authorization required by this code or by any other provision of law.

(b) Possession of a sturgeon egg processing license issued pursuant to this division authorizes the licensee to can, cure, preserve, pack, or otherwise process, or deal at wholesale in, the eggs of sturgeon if, and only if, the eggs are lawfully taken or lawfully possessed pursuant to Section 7230 or ~~8371~~ 7370.

**Comment.** Subdivision (b) of Section 10000 is amended to reflect the effect of prior legislation relocating regulation of sturgeon eggs to Section 7370.

---

7. See 2007 Cal. Stat. ch. 328.

**Proposed Section 45450 (Existing Section 5700); Proposed Section 45455 (Existing Section 5701); Proposed Section 45460 (Existing Section 5701.5); Proposed Section 45500 (Existing Section 5671); Proposed Section 45510(a) (Existing Section 5672); Proposed Section 45515 (Existing Section 5674)**

The proposed sections above would all continue the specified existing sections without substantive change. However, as each existing section contains an obsolete reference to the “State Department of Health Services,” those references would be revised to instead refer to the “State Department of Public Health.”<sup>8</sup>

A Note following five of the six proposed sections invited comment on this substitution.<sup>9</sup> In response to each Note, at least one entity indicates support for updating the reference, and neither entity indicates opposition to the updating.

**The staff recommends that the following revisions of existing sections be included in the draft recommendation:**<sup>10</sup>

**§ 5700 (amended). Specified districts**

5700. Notwithstanding Sections 5670, 5672, 8341, and 9050, native and nonnative mollusks may be taken in Districts 12 and 13 and moved to other areas to be purified for human consumption under such rules and regulations as shall be established by the commission. Such regulations may include, but are not limited to, bag limits, methods of harvest, and provisions for public use. Mollusks taken under this section shall not be used for human consumption unless such use is approved by the ~~State Department of Health Services~~ State Department of Public Health.

**Comment.** Section 5700 is amended to update an obsolete reference to the State Department of Health Services. See Health & Safety Code §§ 20 and 131052(6).

**§ 5701 (amended). Sanitary surveys**

5701. The ~~State Department of Health Services~~ State Department of Public Health may make sanitary surveys of mollusk-growing areas or may use sanitary surveys of mollusk-growing areas made by qualified state or county agencies, and based on such information may classify such areas for purposes of harvesting and moving mollusks which are to be purified for human consumption in accordance with Section 5700. The ~~State Department of Health~~

---

8. See Health & Safety Code §§ 20 and 131052(6).

9. Although this same revision was made in proposed Section 45510(a) (which would continue the first paragraph of existing Section 5672), the revision in that section was inadvertently not called out in the tentative recommendation.

10. Based on other comment from the entities, the only textual revisions proposed to these sections are the updating of the references in the sections to the State Department of Health Services.



~~Services~~ State Department of Public Health shall adopt such rules and regulations as are necessary to implement this section.

**Comment.** Section 5701 is amended to update obsolete references to the State Department of Health Services. See Health & Safety Code §§ 20 and 131052(6).

**§ 5701.5 (amended). Certification of water quality**

5701.5. If examinations are conducted by the ~~State Department of Health Services~~ State Department of Public Health pursuant to this article for purposes of certifying the quality of shellfish-growing waters, certification of water quality shall be commenced within 30 days and completed within six months of the filing of an application by an aquaculturist.

**Comment.** Section 5701.5 is amended to update an obsolete reference to the State Department of Health Services. See Health & Safety Code §§ 20 and 131052(6).

**§ 5671 (amended). Authority of State Department of Public Health**

5671. The ~~State Department of Health Services~~ State Department of Public Health may:

- (a) Examine any area from which shellfish may be taken.
- (b) Determine whether the area is subject to sewage contamination.
- (c) Determine whether the taking of shellfish from the area does or may constitute a menace to the lives or health of human beings.

**Comment.** Section 5671 is amended to update an obsolete reference to the State Department of Health Services. See Health & Safety Code §§ 20 and 131052(6).

**§ 5672 (amended). Notice of contamination**

5672. (a) Upon the determination by the ~~State Department of Health Services~~ State Department of Public Health that the area is or may be subject to sewage contamination, and that the taking of shellfish from it does or may constitute a menace to the lives or health of human beings, it shall ascertain as accurately as it can the bounds of the contamination, and shall post notices on or in the area describing its bounds and prohibiting the taking of shellfish therefrom.

(b) The taking of shellfish from the area is unlawful after the completion of the publication of the notices as prescribed in this article.

**Comment.** Section 5672 is amended to update an obsolete reference to the State Department of Health Services. See Health & Safety Code §§ 20 and 131052(6).

The section is also amended to add subdivision designations.

**§ 5674 (amended). Enforcement**

5674. The ~~State Department of Health Services~~ State Department of Public Health shall enforce the provisions of this article, and for that purpose the inspectors and employees of that agency may enter at all times upon public or private property upon which shellfish may be located.

**Comment.** Section 5674 is amended to update an obsolete reference to the State Department of Health Services. See Health & Safety Code §§ 20 and 131052(6).

**Proposed Section 47465 (Existing Section 9011(c))**

Proposed Section 47465 would continue existing Section 9011(c) without substantive change.

A Note following the proposed section invited comment on whether the existing subdivision was obsolete, and need not be continued in the proposed law. Both entities agree the subdivision is obsolete and need not be continued.

**The staff recommends that a revision of existing Section 9011 be included in the draft recommendation, as follows:**

**§ 9011 (amended). Dungeness and rock crab traps**

9011. (a) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, Dungeness crab, as defined in Section 8275, may be taken with Dungeness crab traps.

(2) A Dungeness crab trap may have any number of openings of any size. However, every Dungeness crab trap shall have at least two rigid circular openings of not less than 4<sup>1</sup>/<sub>4</sub> inches, inside diameter, on the top or side of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap.

(3) Subject to Article 6 (commencing with Section 8275) of Chapter 2, rock crab may be taken incidentally with a Dungeness crab trap used pursuant to this subdivision to take Dungeness crab, provided that the incidental taking occurs only during the season when it is lawful to take both species. A rock crab, taken incidentally with a Dungeness crab trap, that does not comply with Article 6 (commencing with Section 8275) of Chapter 2, shall be immediately returned to the waters from which it was taken.

(b) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, rock crab, as defined in Section 8275, may be taken with rock crab traps.

(2) A rock crab trap may have any number of openings of any size. However, a rock crab trap constructed of wire mesh with an inside mesh measurement of not less than  $1\frac{7}{8}$  inches by  $3\frac{7}{8}$  inches, with the  $3\frac{7}{8}$  inch measurement parallel to the floor, shall have at least one rigid circular opening of not less than  $3\frac{1}{4}$  inches, inside diameter, located on any outside wall of the rearmost chamber of the crab trap and shall be located so that at least one-half of the opening is in the upper half of the trap. Rock crab traps constructed of other material shall have at least two rigid circular openings of not less than  $3\frac{1}{4}$  inches, inside diameter, on the top or side of the rearmost chamber of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap. No rigid circular opening, as required, shall extend more than  $\frac{1}{2}$  inch beyond the plane of the wall side or top of the trap in which it is located, and it shall be clearly accessible to any crab which may be in the trap.

(3) Subject to Article 6 (commencing with Section 8275) of Chapter 2, Dungeness crab may be taken incidentally with a rock crab trap used pursuant to this subdivision to take rock crab, provided that the incidental taking occurs only during the season when it is lawful to take both species. A Dungeness crab, taken incidentally with a rock crab trap, that does not comply with Article 6 (commencing with Section 8275) of Chapter 2, shall be immediately returned to the waters from which it was taken.

(4) A person shall not possess any lobster aboard a vessel while the vessel is being used pursuant to this subdivision to take rock crab.

~~(c) On or before January 1, 2013, the department shall report to the appropriate policy and fiscal committees of the Legislature the impacts, if any, of the changes made to this section by Chapter 478 of the Statutes of 2009. The report shall include information about citations issued pursuant to this section relating to both rock crab and Dungeness crab for the years 2010 to 2012, inclusive.~~

**Comment.** Section 9011 is amended to delete subdivision (c) of the section as obsolete.

### **Proposed Sections 47620 and 47650 (Existing Section 8276.5)**

Proposed Section 47620 would continue existing Section 8276.5(a)(1)-(2) without substantive change. Proposed Section 47650 would continue existing Section 8276.5(a)(8) without substantive change.

Notes following both proposed sections invited comment on whether identified provisions in the existing section should be deleted as obsolete. FGC did

not comment on either Note. DFW agrees that the identified provisions can be deleted as obsolete.

**The staff recommends that a revision of existing Section 8276.5 be included in the draft recommendation, as follows:**

**§ 8276.5 (amended). Dungeness crab trap limits**

8276.5. (a) In consultation with the Dungeness crab task force, or its appointed representatives, the director shall adopt a program, by March 31, 2013, for Dungeness crab trap limits for all California permits. Unless the director finds that there is consensus in the Dungeness crab industry that modifications to the following requirements are more desirable, with evidence of consensus, including, but not limited to, the record of the Dungeness crab task force, the program shall include all of the following requirements:

(1) The program shall contain seven tiers of Dungeness crab trap limits based on California landings receipts under California permits between November 15, 2003, and July 15, 2008, as follows:

(A) The 55 California permits with the highest California landings shall receive a maximum allocation of 500 trap tags.

(B) The 55 California permits with the next highest California landings to those in subparagraph (A) shall receive a maximum allocation of 450 trap tags.

(C) The 55 California permits with the next highest California landings to those in subparagraph (B) shall receive a maximum allocation of 400 trap tags.

(D) The 55 California permits with the next highest California landings to those in subparagraph (C) shall receive a maximum allocation of 350 trap tags.

(E) The 55 California permits with the next highest California landings to those in subparagraph (D) shall receive a maximum allocation of 300 trap tags.

(F) The remaining California permits with the next highest California landings to those in subparagraph (E), which are not described in paragraph (1) or (2) of subdivision (i) of Section 8276.4, shall receive a maximum allocation of 250 trap tags.

(G) The California permits described in paragraphs (1) and (2) of subdivision (i) of Section 8276.4 shall receive a maximum allocation of 175 tags. ~~The tags in this tier shall not be transferable for the first two years of the program.~~

~~(2) Notwithstanding paragraph (1), the director shall not remove a permit holder from a tier described in paragraph (1), if, after an allocation is made pursuant to paragraph (1), an appeal pursuant to paragraph (8) places a permit holder in a tier different than the original allocation.~~

~~(3)~~ (2) Participants in the program shall meet all of the following requirements:

(A) Unless a participant receives a waiver pursuant to paragraph (4), pay a biennial fee for each trap tag issued pursuant to this section to pay the pro rata share of costs of the program, including, but not limited to, informing permit holders of the program, collecting fees, acquiring and sending trap tags to permit holders, paying for a portion of enforcement costs, and monitoring the results of the program. The fee shall not exceed five dollars (\$5) per trap, per two-year period. All of the trap tags allocated to each permit pursuant to subdivision (a) shall be purchased by the permit holder or the permit shall be void.

(B) Purchase a biennial crab trap limit permit of not more than one thousand dollars (\$1,000) per two-year period to pay for the department's reasonable regulatory costs.

(C) Not lease a crab trap tag, and transfer a tag only as part of a transaction to purchase a California permitted crab vessel.

(D) A Dungeness crab trap that is fished shall contain a trap tag that is fastened to the main buoy, and an additional tag provided by the permit holder attached to the trap. The department shall mandate the information that is required to appear on both buoy and trap tags.

~~(4)~~ (3) The department shall issue a participant a waiver from the biennial fee for each trap tag described in subparagraph (A) of paragraph ~~(3)~~ (2) if the participant is unable to fish due to mandatory military service and the participant submits a request for a waiver to the department at the same time that the participant renews the permit issued pursuant to subparagraph (B) of paragraph ~~(3)~~ (2). A participant who receives a waiver pursuant to this paragraph shall not apply to the department to fish for Dungeness crab during the first year of the waiver, but may apply to fish for Dungeness crab during the second year of the waiver if the participant pays the full cost of the biennial fee for each trap tag. The department shall not limit the number of times a participant may request a waiver.

~~(5)~~ (4) Notwithstanding subparagraph (D) of paragraph ~~(3)~~ (2), a vessel may transit state waters with Dungeness crab traps that are not tagged pursuant to subparagraph (D) of paragraph ~~(3)~~ (2) if the traps contain either a valid Oregon or Washington trap tag, no crab species are onboard the vessel, and the traps are not deployed in state waters.

~~(6)~~ (5) The department shall annually provide an accounting of all costs associated with the crab trap limit program. The department shall use excess funds collected to reduce the cost of the crab trap limit permit fee or tag fee in subsequent years of the program.

~~(7)~~ (6) Permit holders may replace lost tags by application to the department and payment of a fee not to exceed the reasonable costs

incurred by the department. The department may waive or reduce a fee in the case of catastrophic loss of tags.

~~(8) Any Dungeness crab permit holder may submit to the director an appeal of a trap tag allocation received pursuant to this section, by March 31, 2014, on a permit by permit basis for the purpose of revising upward or downward any trap tag allocation. Any appeal to revise upward a trap tag allocation shall be based on evidence that a permit's California landings during the period between November 15, 2003, and July 15, 2008, inclusive, were reduced as a result of unusual circumstances and that these circumstances constitute an unfair hardship, taking into account the overall California landings history as indicated by landing receipts associated with the permit. The director shall initiate the appeal process within 12 months of receiving an appeal request. The appeal shall be heard and decided by an administrative law judge of the Office of Administrative Hearings, whose decision shall constitute the final administrative decision. Except as provided in subparagraph (B), any Dungeness crab permit holder requesting an appeal to revise upward the permit holder's trap tag allocation shall pay all expenses, including a nonrefundable filing fee, as determined by the department, to pay for the department's reasonable costs associated with the appeal process described in this paragraph.~~

(b) (1) In addition to criminal penalties authorized by law, a violation of the requirements of the program created pursuant to this section shall be subject to the following civil penalties:

(A) Conviction of a first offense shall result in a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) per illegal trap or fraudulent tag.

(B) Conviction of a second offense shall result in a fine of not less than five hundred dollars (\$500) and not more than two thousand five hundred dollars (\$2,500) per illegal trap or fraudulent tag, and the permit may be suspended for one year.

(C) Conviction of a third offense shall result in a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) per illegal trap or fraudulent tag, and the permit may be permanently revoked.

(2) The severity of a penalty within the ranges described in this subdivision shall be based on a determination whether the violation was willful or negligent and other factors.

(3) The portion of monetary judgments for noncompliance that are paid to the department shall be deposited in the Dungeness Crab Account created pursuant to subdivision (e).

(c) For the purposes of this section, a proposed recommendation that receives an affirmative vote of at least 15 of the non-ex officio members of the Dungeness crab task force may be transmitted to the director or the Legislature as a recommendation, shall be considered

to be the consensus of the task force, and shall be considered to be evidence of consensus in the Dungeness crab industry. Any proposed recommendation that does not receive a vote sufficient to authorize transmittal to the director or Legislature as a recommendation shall be evidence of a lack of consensus by the Dungeness crab task force, and shall be considered to be evidence of a lack of consensus in the crab industry.

(d) The director may modify the program adopted pursuant to subdivision (a), if consistent with the requirements of this section, after consultation with the Dungeness crab task force or its representatives and after the task force has had 60 days or more to review the proposed modifications and recommend any proposed changes. The director may implement the modifications earlier than 60 days after it is sent to the Dungeness crab task force for review, if recommended by the task force.

(e) The Dungeness Crab Account is hereby established in the Fish and Game Preservation Fund and the fees collected pursuant to this section shall be deposited in that account. The money in the account shall be used as follows:

(1) By the department, upon appropriation by the Legislature, for administering and enforcing the program.

(2) In each fiscal year through the 2029 fiscal year, upon appropriation by the Legislature, of the amount remaining in the account after an allocation pursuant to paragraph (1), the sum of one hundred fifty thousand dollars (\$150,000), if available, shall be allocated to the council to support the administration and facilitation of the Dungeness crab task force.

(f) For purposes of meeting the necessary expenses of initial organization and operation of the program until fees may be collected, or other funding sources may be received, the department may borrow money as needed for these expenses from the council. The borrowed money shall be repaid within one year from the fees collected or other funding sources received. The council shall give high priority to providing funds or services to the department, in addition to loans, to assist in the development of the program, including, but not limited to, the costs of convening the Dungeness crab task force, environmental review, and the department's costs of attending meetings with task force members.

(g) (1) It is the intent of the Legislature that the department, the council, and the Dungeness crab task force work with the Pacific States Marine Fisheries Commission and the Tri-State Dungeness Crab Commission to resolve any issues pertaining to moving the fair start line south to the border of California and Mexico.

(2) For purposes of this subdivision, the resolution of issues pertaining to the fair start line shall be limited to assessing the positive and negative implications of including District 10 in the tri-

state agreement, including working with the Tri-State Dungeness Crab Commission to amend Oregon and Washington laws to include District 10 in the regular season fair start clause, and discussion of providing different rules for District 10 with regard to preseason quality testing.

(h) For purposes of this section, “council” means the Ocean Protection Council established pursuant to Section 35600 of the Public Resources Code.

(i) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed.

**Comment.** Section 8276.5 is amended to delete obsolete provisions within the section, and make conforming revisions.

### **Proposed Section 49610 (Existing Section 9001.7(k))**

Proposed Section 49610 would continue existing Section 9001.7(k) without substantive change.

The existing provision authorizes possession of lobster aboard or landed from a vessel on which finfish are also present, if specified conditions are satisfied. One such condition requires every person aboard the vessel to comply with “Article 5 of Chapter 2 of the Fish and Game Code.”

A Note following the proposed provision indicated that, while there exists more than one “Article 5 of Chapter 2” in the Fish and Game Code, the proposed provision was drafted based on an assumption that the article and chapter referenced were the article and chapter contained in the same statutory part as the existing section.

Both entities responded to the Note, agreeing with the staff’s conclusion.

**The staff recommends that a clarifying revision of existing Section 9001.7 be included in the draft recommendation, as follows:**<sup>11</sup>

#### **§ 9001.7 (amended). Taking of finfish**

9001.7. Finfish, other than sablefish and hagfish, may be taken under a general trap permit if all of the following criteria are also met:

(a) Every person aboard the vessel possesses a valid general trap permit that has not been suspended or revoked.

(b) If nearshore species are present, at least one person aboard the vessel possesses a valid nearshore fishery permit and a nearshore fishery trap endorsement that has not been suspended or revoked.

---

11. The revision also includes the addition of a clarifying comma in subdivision (k).



(c) If deeper nearshore species are present, at least one person aboard the vessel possesses a valid deeper nearshore species fishery permit that has not been suspended or revoked.

(d) During the period from one hour after sunset to one hour before sunrise, finfish traps that are left in the water shall be unbaited with the door secured open. If, for reasons beyond the control of the permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(e) Popups shall not be used on buoy lines attached to finfish traps, and shall not be possessed aboard a vessel when taking finfish under a general trap permit.

(f) Trap destruction devices used on finfish traps shall conform to the current regulatory requirements for those devices pursuant to Section 9003 and as adopted by the commission.

(g) No finfish traps shall be set within 750 feet of any pier, breakwall, or jetty in District 6, 7, 17, 18, 19, 19A, 19B, 20, 20A, 20B, or 21.

(h) No more than 50 finfish traps may be used in state waters along the mainland shore.

(i) The mesh of any finfish trap used pursuant to this section shall measure not less than two inches by two inches.

(j) The following fish shall not be used as bait in finfish traps:

(1) Lobster.

(2) Crabs of the genus *cancer*, except rock crab, yellow crab, and red crab, as identified in Section 8282, which may be used as bait under the authority of a rock crab trap permit issued pursuant to Section 8282.

(3) Any other finfish or invertebrate to which a minimum size limit applies that is used or possessed in a condition so that its size can not be determined.

(k) Lobster may be possessed aboard or landed from any vessel on which finfish are also present, if every person aboard the vessel has a valid lobster permit that has not been suspended or revoked, and complies with Article 5 (commencing with Section 8250) of Chapter 2 ~~of the Fish and Game Code~~, this article, and the regulations adopted pursuant thereto.

**Comment.** Subdivision (k) of Section 9001.7 is amended to clarify its meaning.

### **Proposed Section 50655 (Existing Section 1068)**

Proposed Section 50655 would continue existing Section 1068 without substantive change.

A Note following the proposed section invited comment on whether the existing section was obsolete and should be discontinued, based on the 2002 repeal

of an underlying funding provision upon which the existing section was dependent.

FGC did not respond to this Note, but DFW advised the existing section can be repealed as obsolete.

**The staff recommends that a repeal of existing Section 1068 be included in the draft recommendation, as follows:**

**§ 1068 (repealed). Department grant**

~~1068. (a) Beginning November 1, 1991, the director shall make a grant in installments to a nonprofit organization of sea urchin divers in an amount not to exceed four hundred thousand dollars (\$400,000), for the organization to accomplish the following purposes:~~

~~(1) To establish a communications network among sea urchin divers, through a newsletter and such other means as are deemed necessary and appropriate by the organization, providing divers with information on policies, procedures, statutes, and regulations affecting the sea urchin fishery, meeting announcements, and for other information the department reasonably requests to be transmitted to sea urchin divers.~~

~~(2) To establish an education program on the conservation and utilization of sea urchins.~~

~~(3) To convene statewide conferences for members of the industry to meet for purposes of strengthening the industry and benefiting industry goals.~~

~~The grant shall be paid, upon submission and approval of an annual budget, in quarterly installments, in amounts deemed appropriate by the department, upon the submission to the department of progress reports which demonstrate the continued achievements of the organization toward the intended goals.~~

~~(b) Prior to making the grant, the director shall verify from the nonprofit organization's bylaws that it is established for, among other purposes, the protection, conservation, enhancement, and promotion of the sea urchin fishery, and that its membership, including its board of directors, is composed solely of licensed commercial sea urchin divers.~~

~~(c) The grant shall be funded from revenues received pursuant to former subdivision (b) of Section 8051.1, as that subdivision read on December 31, 1995. If the department determines that the revenue received from former subdivision (b) of Section 8051.1, as that subdivision read on December 31, 1995, is not sufficient to fund the amount of the grant, including departmental overhead charges which shall be recovered from the revenues received pursuant to that former subdivision (b) of Section 8051.1, the department shall~~

~~reduce the amount of the grant accordingly. The revenue received pursuant to that former subdivision (b) of Section 8051.1 shall remain available for funding of the grant program pursuant to this subdivision until that revenue is fully encumbered, or the authorized amount of the grant program is expended, whichever event is later.~~

~~(d) The revenue received pursuant to former subdivision (b) of Section 8051.1 as it read on December 31, 1995, shall first be used to reimburse the department for departmental overhead charges incurred in administering the grant.~~

**Comment.** Section 1068 is repealed as obsolete.

#### 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 Section 37810 (Existing Section 7601)**

Proposed Section 37810 would restate without substantive change existing Section 7601, which defines the term “vessel owner.”

A Note following the proposed section advised how the definition would be incorporated in the proposed law. Both entities express a belief that the restatement may change the meaning of the section.

**The staff recommends that the revision of existing Section 7601 as set forth in proposed Section 37810 not be included in the draft recommendation.**

#### **Proposed Section 42900 (no existing section)**

Proposed Section 42900 would be a new section, added for drafting convenience, which would have identified a leopard shark as a groundfish for purposes of classification in the proposed law.

A Note following the proposed section invited comment on whether that classification is correct. FGC did not respond to this Note, but DFW indicates the

classification would be a significant substantive change that may have unintended consequences.

**The staff recommends that the provision set forth in proposed Section 42900 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 38865(a) (Existing Section 2359); Proposed Sections 41005 and 43950 (Existing Section 5514);<sup>12</sup> Proposed Section 42100 (Existing Section 7925)<sup>13</sup>; Proposed Section 43265 (Existing Section 10002); Proposed Section 43850 (Existing Section 2356)**

The proposed sections listed above would each restate some or all of the corresponding existing sections to make those sections easier to understand, with no intended substantive change in meaning.

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.**

#### 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

---

12. Two clarifying revisions of the existing section offered by DFW are noted and will be considered.

13. Based on comments offered by both entities in response to the Note following proposed Section 42100, if a revision of existing Section 7925 is included in the draft recommendation, the revision would not include a proposed new comma identified and objected to by both entities, and a cross-reference in the existing section to existing Section 1053 would be revised to cross-refer to existing Section 1053.1.

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 5350 (Existing Sections 12010 and 12002(c))**

Proposed Section 5350 would combine and restate existing Section 12010 and part of existing Section 12002(c) with no intended substantive change.

A Note following the proposed section invited comment on whether the combination and restatement would cause any substantive change. The Commission has not yet received a response to the Note from either entity.

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

**Proposed Section 40380 (Existing Sections 8552.2 and 8552.8); Proposed Section 40395 (Existing Section 8552.4); Proposed Section 40420 (Existing Section 8557)**

The proposed sections listed above, all of which relate to the take of herring, would continue the corresponding existing sections without substantive change. Each proposed section is followed by a Note inviting comment on whether a possible technical inconsistency in the corresponding existing section requires clarification.

Both entities advise in response to the Notes that all three existing sections have become inoperative due to the adoption of the California Pacific Herring Fishery Management Plan and implementing regulations. FGC further indicates that the implementing regulations became effective on March 1, 2020, and believes the four existing sections should be repealed.

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

**Proposed Section 46010 (Existing Section 5522(c))**

Proposed Section 46010 would continue existing Section 5522(c) without substantive change.

The existing section contains an apparently obsolete reference to a “stamp” as authority for the take of abalone, rather than the “report card” that the

Commission understood to be the type of authority currently required. A Note following the proposed section invited comment on whether the reference to the “abalone stamp” should be revised to refer either to an “abalone report card” or to an “abalone stamp or report card.”

The entities both agree that a revision of the reference would be appropriate, but disagree as to what the new reference should be.

**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 46405 (Existing Section 4181(a))**

Proposed Section 46405 would continue without substantive change existing Section 8475, a section that requires the Fish and Game Commission to regulate the commercial taking of freshwater clams.

A Note following the proposed section invited comment on whether Section 8475 was intended to apply only to the taking of freshwater clams for use as bait, as the existing section is located in an article of the existing code entitled “Freshwater Fish for Bait.”

Both entities indicate the existing section is *not* intended to apply only to the taking of freshwater clams for use as bait, despite the placement of the section within that statutory article. However, neither entity addresses whether a statutory revision would be appropriate to clarify this inconsistency.

**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 47070 (Existing Section 8278)**

Proposed Section 47070 would continue without substantive change existing Section 8278.

The existing section is phrased in a manner that leaves its intended application ambiguous. A Note following the proposed section asked a question intended to resolve that ambiguity.

Both entities agreed on the answer to the posed question, and FGC offered a suggestion it believed would provide greater clarity. However, whether or how to clarify the section was not addressed by DFW.

**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 47150 (Existing Section 8276.3)**

Proposed Section 47150 would continue without substantive change existing Section 8276.3.

This existing section is also phrased in a manner that leaves its intended application unclear. A Note following the proposed section invited comment on that issue.

FGC did not respond to this Note. DFW explained its understanding of the application of the section, but did not address whether any clarifying revision would be appropriate.

**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 47450(a) (Existing Section 8284(a))**

Proposed Section 47450(a) would continue the first sentence of existing Section 8284(a) without substantive change.

This sentence of the existing section authorizes the use of crab traps to take Dungeness crab, “subject to” existing provisions in two identified statutory articles. A Note following the proposed section pointed out other provisions relevant to the subject matter of Section 8284(a) that are not located in either of those articles, and invited comment on whether the conduct authorized by Section 8284(a) should also be subject to those provisions.

FGC responded that reorganization of the existing code was outside the scope of the Commission’s current review. DFW agreed that the Section 8284(a) should be made subject to two of the provisions identified by the Commission.

**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 47460(b) (Existing Section 9011(a)(3))**

Proposed Section 47460(b) would continue existing Section 9011(a)(3) without substantive change.

Section 9011(a)(3) authorizes the taking of rock crab, “subject to” provisions in an identified statutory article. A Note following the proposed section pointed out that the existing code contained other provisions relevant to the subject matter of Section 9011(a)(3) that are not located in that article, and invited comment on whether the taking authorized by Section 9011(a)(3) should also be subject to those provisions.

FGC did not respond to this Note. DFW indicated it was not commenting on the Commission’s recodification of the code at this time, but that said, Section 9011(a)(3) “can be made subject to” the other provisions identified by the Commission.

**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 51405 (Existing Section 8399.1)**

Proposed Section 51405 would continue existing Section 8399.1 without substantive change.

A Note following the proposed section invited comment on two detailed questions posed in the Note, intended to help resolve perceived ambiguities in the existing section. Both entities helpfully responded to the two questions with essentially identical answers. However, neither the Note nor any of the answers suggest whether or how the existing section should be revised to resolve the ambiguities.

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

#### NO FURTHER ACTION RECOMMENDED

This part of the memorandum addresses revisions inquired about in the tentative recommendation for which the staff has concluded, after considering public comment, that there is not sufficient evidence of a problem to justify making the described 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 Section 41010 (Existing Sections 316.5)**

Proposed Section 41010 would continue existing Section 316.5 without substantive change.

In a Note following the proposed section, the Commission inquired whether the section's authorized prohibition of taking or possessing of salmon "in the same manner" as prohibited by federal law was sufficiently clear.

**Based on responsive comment from both entities, the staff recommends no further action relating to this provision at this time.**

#### **Proposed Section 41745 (Existing Section 8238)**

Proposed Section 41745(a) would continue existing Section 8238 without substantive change.

At the time the tentative recommendation was circulated, Section 8238 contained a cross-reference to Section 8238.3, a section that had been repealed by its own terms in 1988, operative January 1, 1992.<sup>14</sup> A Note following the proposed section invited comment on how to continue the part of Section 8238 containing the cross-reference to Section 8238.3.

In 2019, an amendment to Section 8238 revised the cross-reference to Section 8238.3 to reflect its repealed status.<sup>15</sup>

FGC did not comment on the Note in the tentative recommendation. DFW believes continued reference to the repealed section is appropriate.

**In light of the recent amendment of Section 8238, the staff recommends no further action relating to this provision at this time.**

#### **Proposed Section 41755 (Existing Section 8239.1)**

Proposed Section 41755(a)-(c) would continue existing Section 8239.1 without substantive change.

At the time the tentative recommendation was circulated, Section 8239.1 contained a cross-reference to a paragraph in Section 8239, a section that was repealed by its own terms in 1990, operative January 1, 1992.<sup>16</sup> A Note following

---

14. See 1988 Cal. Stat. ch. 1164.

15. See 2019 Cal. Stat. ch. 472.

16. See 1990 Cal. Stat. ch. 1703.

the proposed section invited comment on how to continue the part of Section 8239.1 containing the cross-reference to Section 8239.

In 2019, an amendment to Section 8239.1 reworded the text of the section and deleted the cross-reference to Section 8239.<sup>17</sup>

FGC did not comment on the Note in the tentative recommendation. DFW suggests substitution of a different cross-reference in Section 8239.1.

**In light of the recent amendment of Section 8239.1, the staff recommends no further action relating to this provision at this time.**

### **Proposed Section 41900 (Existing Sections 8247 and 8247.3)**

Proposed Section 41900 would have continued the first sentence of former Section 8247 without substantive change.

The proposed section would have also incorporated existing Section 8247.3, which addressed the same subject matter as Section 8247, but the Commission believed Section 8247.3 was a transitional provision that had become obsolete.

The tentative recommendation therefore proposed to discontinue Section 8247.3 in the proposed law, and a Note following the proposed section invited comment on whether that discontinuation would be problematic.

In 2019, Sections 8247 and 8247.3 were both repealed by the Legislature.<sup>18</sup>

FGC did not comment on the Note in the tentative recommendation. DFW agreed that Section 8247.3 could be deleted from the proposed law.

**In light of the recent repeal of Sections 8247 and 8247.3, the staff recommends no further action relating to either section at this time.**

### **Proposed Section 43655(a) (Existing Section 8394)**

Proposed Section 43655(a) would continue existing Section 8394 without substantive change.

In a Note following the proposed section, the Commission inquired whether the meaning of the phrase “subject to regulations adopted by the commission” as used in the existing section was sufficiently clear.

**Based on responsive comment from both entities, the staff recommends no further action relating to this provision at this time.**

---

17. See 2019 Cal. Stat. ch. 472.

18. See 2019 Cal. Stat. ch. 472.

NOTES NOT CALLING FOR REVISION AT THIS TIME

The tentative recommendation included Notes relating to the provisions listed below that merely explain the legislative status of the provision, or discuss a proposed revision that is primarily based on recodification of the existing code and therefore not being presented to the Commission at this time. For completeness, the provisions preceding these Notes are listed below, but the subject matter of the Notes will not be discussed further in this memorandum (unless a Commissioner or commenter raises an issue).

- **Proposed Section 4702 (Existing Section 12000(b)(8)-(10))**
- **Proposed Section 5830 (Existing Section 8280.4)**
- **Proposed Section 5832 (Existing Section 8280.1(d)-(e))**
- **Proposed Section 5834 (Existing Section 8279.1(c)-(d))**
- **Proposed Section 38200 (Existing Section 5515(a))**
- **Proposed Section 38560 (Existing Section 8183)**
- **Proposed Section 38875 (Existing Sections 2562, 6596.1(c))**
- **Proposed Section 39960 (Existing Section 8494(c))**
- **Proposed Section 39965 (Existing Section 8494(c))**
- **Proposed Section 39970 (Existing Section 8494(d))**
- **Proposed Section 39975 (Existing Section 8494(e))**
- **Proposed Section 40100 (Existing Section 8495)**
- **Proposed Section 40115 (Existing Section 8496)**
- **Proposed Section 40510 (Existing Section 8389(b), (c))**
- **Proposed Section 41305 (Existing Section 8231)**
- **Proposed Section 41390 (Existing Section 7863)**
- **Proposed Section 41455 (Existing Sections 8217, 8371(c)-(d))**
- **Proposed Section 41490 (Existing Section 8834.1)**
- **Proposed Section 45305 (Existing Section 9053)**
- **Proposed Section 47010 (Existing Section 8276.4(i), (j))**
- **Proposed Section 47060 (Existing Section 8276(c))**
- **Proposed Section 47155 (Existing Section 8279.1)**
- **Proposed Section 47300 (Existing Section 8276)**
- **Proposed Section 47365 (Existing Section 8276.2(c))**
- **Proposed Section 47375 (Existing Section 8276.2(d))**

- Proposed Section 47655 (Existing Section 8276.5(c)-(d))
- Proposed Section 47660 (Existing Section 8276.5(e)-(f))
- Proposed Section 47665 (Existing Section 8276.5(i))
- Proposed Section 47800 (Existing Section 8276.4(a))
- Proposed Section 47805 (Existing Section 8276.4(b)-(c))
- Proposed Section 47810 (Existing Section 8276.4(d))
- Proposed Section 47815 (Existing Section 8276.4(e))
- Proposed Section 47820 (Existing Section 8276.4(f))
- Proposed Section 47825 (Existing Section 8276.4(g))
- Proposed Section 47835 (Existing Section 8276.4(j))
- Proposed Section 47850 (Existing Section 8276.1(a))
- Proposed Section 47855(a) (Existing Section 8276.1(b))
- Proposed Section 47855(b) (Existing Section 8276.1(e))
- Proposed Section 47860 (Existing Section 8276.1(c))
- Proposed Section 47865 (Existing Section 8276.1(d))
- Proposed Section 47870 (Existing Section 8276.1(f))
- Proposed Section 47900 (Existing Section 8280.1(a))
- Proposed Section 47910 (Existing Sections 8280.1(e), 8280.6(d))
- Proposed Section 48100 (Existing Section 8280.1(b))
- Proposed Section 48105 (Existing Section 8280.1(c))
- Proposed Section 48110 (Existing Section 8280.2(a)-(e))
- Proposed Section 48115 (Existing Sections 8280.1(e), 8280.2(f))
- Proposed Section 48655 (Existing Section 9011(b))
- Proposed Section 49150 (no existing section)
- Proposed Section 49700 (Existing Sections 8250.5(a), 9010(a))
- Proposed Section 49710 (Existing Sections 8258, 9010(b))
- Proposed Section 51100(a) (Existing Sections 8595(a), 8842(a))

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 2021-49.

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
4702	12000(b)(8)-(10)	No comment	No comment	6
5350	12010, 12002(c)	No comment	No comment	4
5830	8280.4	No comment	No comment	6
5832	8280.1(d)-(e)	No comment	No comment	6
5834	8279.1(c)-(d)	No comment	No comment	6
37810	7601	FGC believes that the addition of a comma at the end of line 29 further complicates what can be an already confusing sentence and may change the meaning; therefore, FGC suggests removing the comma. FGC has no comment on placing the definition in two sections of code; reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW has no comment at this time on placing the definition in sec. 7601 in two places in the code. That is beyond the scope of this review. However, the addition of a comma at the end of line 29 in proposed section 37810 after "vessel" may change the meaning of sec. 7601.	2
38200	5515(a)	No comment	Note is informational only. No comment.	6
38560	8183	No comment	No comment	6
38760	8623	FGC believes that sec. 8623(e) can be amended to replace "the provisions of this section" with "subdivision (b)." CLRC's proposal to divide sec. 8623 into three new sections is outside the scope of the current review.	Sec. 8623(e) can be amended to replace "the provisions of this section" with "subdivision (b)". The proposal to divide Section 8623 into three new sections is beyond the scope of CDFW's review at this time.	1
38865(a)	2359	FGC believes that the proposed restatement of sec. 2359 does not change its substantive effect. Combining Fish and Game Code sections (2359 and that portion of 2363 related to striped bass) is outside the scope of the current review.	CDFW believes the proposed restatement of sec. 2359 would not cause any substantive change to that section. The proposal to combine secs. 2359 and 2363(b), as they relate to striped bass is beyond the scope of CDFW's review at this time.	3
38875(a)-(b)	2362	No comment	The proposal to relocate sec. 6596.1 so it is no longer subject to the exemption in sec. 6403 is beyond the scope of CDFW's review at this time, as is the proposal to combine secs. 6956.1(c) and 2362.	6
38875(c)	6596.1	FGC agrees that sec. 6596.1(c) has no application to aquaculture business activities. Reorganization of the Fish	The proposal to relocate sec. 6596.1 so it is no longer subject to the exemption in sec. 6403 is beyond the scope of CDFW's	6

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
		and Game Code is outside the scope of the current review.	review at this time, as is the proposal to combine secs. 6956.1(c) and 2362.	
39055	8623	FGC believes that sec. 8623(e) can be amended to replace "the provisions of this section" with "subdivision (b)." CLRC's proposal to divide sec. 8623 into three new sections is outside the scope of the current review.	Sec. 8623(e) can be amended to replace "the provisions of this section" with "subdivision (b)." Also, see comment on sec. 8623 above.	1
39955	8494(b)	CLRC note (1): No comment.  CLRC note (2): FGC agrees the language could be more clear; the intent is to limit issuing California halibut bottom trawl vessel permits to applicants who held the permit in the preceding year.	Two comments: (1) Note is informational only. No comment. (2) CDFW agrees the language could be more clear and that the intention is to limit issuance of California halibut bottom trawl vessel permits to persons who held the permit in the preceding year.	1
39960	8494(c)	No comment	No comment	6
39965	8494(c)	No comment	No comment	6
39970	8494(d)	No comment	No comment	6
39975	8494(e)	No comment	No comment	6
40100	8495	No comment	No comment	6
40115	8496	No comment	No comment	6
40380	8552, 8552.2	FGC believes that inoperative sections should be repealed. Sec 8552 became inoperative upon FGC's adoption of the California Pacific Herring Fishery Management Plan and implementing regulations, which were effective March 1, 2020.	Secs. 8552 and 8552.2 have become inoperative due to the adoption of the California Pacific Herring Fishery Management Plan and implementing regulations by the Fish and Game Commission. As a result, CDFW is not commenting on this Note.	4
40395	8552.4	FGC believes that inoperative sections should be repealed. Sec 8552.4 became inoperative upon FGC's adoption of the California Pacific Herring Fishery Management Plan and implementing regulations, which were effective March 1, 2020.	Sec. 8552.4 has become inoperative due to the adoption of the California Pacific Herring Fishery Management Plan and implementing regulations by the Fish and Game Commission. As a result, CDFW is not commenting on this Note.	4
40420	8557	FGC believes that inoperative sections should be repealed. Sec 8557 became inoperative upon FGC's adoption of the California Pacific Herring Fishery Management Plan and implementing regulations, which were effective March 1, 2020.	Sec. 8557 has become inoperative due to the adoption of the California Pacific Herring Fishery Management Plan and implementing regulations by the Fish and Game Commission. As a result, CDFW is not commenting on this Note.	4
40510	8389(b), (c)	FGC believes that the proposed revision to move sec. 8389(b) and change reference to "this article" is outside the scope of the current review. The proposal moves the subsection to a chapter focused only on herring and replaces reference to	CDFW believes the restatement of sec. 8389(b) causes a significant substantive change in the meaning of the provision that is not beneficial. Existing law provides the Fish and Game Commission (FGC) authority to limit the number of herring permits for several reasons	6

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
		"this article" (which governs the take and sale of multiple marine species) with reference to a chapter; the revision potentially curtails FGC's authority to limit herring permits for reasons that are not directly related to herring.	among which is to "otherwise carry out this article," and the article governs the take and sale of many different species of marine life. By replacing the reference to "this article" with a reference to a chapter that will only address herring, the restatement would result in curtailment of the FGC's authority to limit the number of herring permits for any reason that does not involve herring.	
41005	5514	FGC believes that the proposed restatement of sec. 5514 does not cause a substantive change in the meaning of that section. FGC has no comment about dividing sec. 5514 into two sections based on the species as reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW believes that the restatement of sec. 5514 does not cause a substantive change in the meaning of that section, except it has no comment at this time about dividing this section up based on the species of fish. CDFW believes that the phrase "In inland waters" could be moved to the beginning of (a) and (b) to be more clear.	3
41010	316.5	FGC believes that no revision to sec. 316.5 is necessary; the language is permissive and other Fish and Game Code sections (200, 205) provide authority for FGC to regulate salmon, even when not regulated by federal law.	CDFW believes that no revision to sec. 316.5 is needed because sec. 200 and other sections make clear that the Fish and Game Commission's authority to regulate salmon is not limited to when they are regulated by federal law.	5
41305	8231	Reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW is not commenting on moving the definitions in sec. 8231 to make them generally applicable to all commercial salmon fishing provisions because it is not reviewing the reorganization of the code at this time.	6
41390	7863	No comment	No comment	6
41455	8217, 8371(c)-(d)	Reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW is not commenting on the restatement or combining of secs. 8217 and 8371(a) and (b) at this time because to do so CDFW would have to determine whether the restatement captures all of the exceptions and restrictions on the sale of salmon contained in the existing article as provided in sec. 8217 to ensure that they are captured in the restatement.	6
41490	8834.1	No comment	No comment	6
41735	8233.5, 8237	FGC believes that the proposed combination and restatement of secs. 8233.5 and 8237 do not cause any substantive change in the meaning of those provisions.	CDFW agrees that secs. 8233.5 and 8237 can be combined and that the restatement of those sections does not cause any substantive change in the meaning of the provisions.	1
41745(a)	8238	No comment	CDFW agrees that sec. 8238.3 referenced in sec. 8238 has been repealed. CDFW is not aware of any section that was adopted to replace it and so concurs that	5

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
			the continued reference to the repealed section is appropriate.	
41755	8239.1	No comment	Former sec. 8239(b)(2), now repealed, is nearly identical to current sec. 8239(b) and as a result CDFW believes that the reference in the last sentence of sec. 8239.1(b)(2) can be amended to delete "in paragraph (2) of".	5
41900	8247, 8247.3	No comment	This Note relates to sec. 8247.3, not sec. 8247. Section 8247.3 can be deleted. Obsolete.	5
42100	7925	CLRC note (1): FGC has no comment.  CLRC note (2): FGC agrees with CLRC regarding changing the cross-reference to sec. 1053.1.FGC notes the addition of a comma after the word "aboard" in the first sentence of subdivision (a) (see line 32); FGC believes adding the comma potentially changes the meaning of the sentence, or at least makes it unclear.	Two comments. (1) The proposed restatement of sec. 7925 generally does not change its intended meaning, although CDFW believes that the addition of the comma on line 32 in proposed sec. 42100 after "aboard" may change the meaning of sec. 7925. At a minimum the addition of the comma is unnecessary. (2) The reference in sec. 7149.05(a)(4) to sec. 1053 should be changed to sec. 1053.1 since sec. 1053 was repealed and sec. 1053.1 is substantially similar to former sec. 1053.	3
42900	none	No comment	The Note incorrectly refers to "sablefish" while the new section being proposed refers to "leopard shark". These are not the same species. That said, CDFW does not support adding a new section specifying that a leopard shark is a groundfish because it is a significant substantive change and may have unintended consequences in that it may preclude other shark-related sections from applying to the species. Additionally, Title 14, sec 1.91(a)(5) provides that leopard shark is a "federal groundfish", not a "groundfish" as stated in the proposed definition.	2
43250	10000	No comment	CLRC is correct in noting that existing sec. 8371 referred to in sec. 10000(b) no longer addresses sturgeon and in updating the cross-reference to account for 2007 legislation that amended secs. 7370 and 8371.	1
43265	10002	No comment	The restatement of sec. 10002(b) would not cause any substantive change in the provision's meaning.	3
43655	8394, 8394.5	CLRC note (1): FGC believes the proposed restatement does not result in a substantive change. Regarding CLRC's request for comment on the meaning of "subject to regulations	Two comments: (1) The proposed restatement does not result in a substantive change because it continues the existing language regarding the Fish and Game Commission's regulatory	5



Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
		<p>adopted by the commission," FGC believes it is intended to acknowledge that FGC retains authority to provide further clarity and specificity of the section's requirements through regulation; the language is used throughout the code.</p> <p>CLRC note (2): No comment.</p>	<p>authority. Although the CLRC expresses concern about the clarity of this existing language and invites comment on its meaning, this language is used frequently throughout the code to indicate the Fish &amp; Game Commission retains authority to adopt related regulations. CDFW defers to the Fish and Game Commission for its interpretation of the meaning of this language. (2) This Note is informational only. No comment.</p>	
43850	2356	<p>FGC believes that the proposed restatement of sec. 2356 does not cause a substantive change in the meaning of that section.</p>	<p>CDFW believes that the restatement of sec. 2356 does not cause a substantive change in the meaning of that section.</p>	3
43950	5514	<p>FGC believes that the proposed restatement of sec. 5514 does not cause a substantive change in the meaning of that section. FGC has no comment about dividing sec. 5514 into two sections based on the species as reorganization of the Fish and Game Code is outside the scope of the current review.</p>	<p>CDFW believes that the restatement of sec. 5514 does not cause a substantive change in the meaning of that section, except it has no comment at this time about dividing this section up based on the species of fish. CDFW believes that the phrase "In inland waters" could be moved to the beginning of both (a) and (b) to be more clear.</p>	3
44765	8623	<p>FGC believes that sec. 8623(e) can be amended to replace "the provisions of this section" with "subdivision (b)." CLRC's proposal to divide sec. 8623 into three new sections is outside the scope of the current review.</p>	<p>Sec. 8623(e) can be amended to replace "the provisions of this section" with "subdivision (b)". Also, see comment on sec. 8623 above.</p>	1
45305	9053	<p>The questions raised in CLRC's notes relate to reorganizing multiple sections and is therefore outside the scope of the current review.</p>	<p>Two comments: (1) CDFW is not commenting on the change in sec. 9053 at this time because it is beyond the scope of this review. CDFW is not dealing with the overall recodification at this time. (2) Same as (1).</p>	6
45450	5700	<p>FGC believes that revising the reference in sec. 5700 to "State Department of Public Health" is appropriate. However, FGC notes that the proposed restatement of sec. 5700 changes "under such rules and regulations as shall be established by the commission" to "under rules and regulations that may be established by the commission." Given that the existing language is mandatory and the proposed language is permissive, FGC believes the restatement may have unintended consequences and, therefore, is a significant substantive change.</p>	<p>CDFW agrees that the reference in sec. 5700 should be changed to the "Department of Public Health." While not the subject of this Note, CDFW comments that other language in this restatement is a significant, substantive change in the law (e.g. "shall" to "may".)</p>	1

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
45455	5701	No comment	CDFW agrees that the reference in sec. 5701 should be changed to the "Department of Public Health."	1
45460	5701.5	No comment	CDFW agrees that the reference in sec. 5701.5 should be changed to the "Department of Public Health."	1
45500	5671	FGC believes that revising the reference in sec. 5671 to "State Department of Public Health is appropriate. FGC notes the CLRC comment states that sec. 5669 (definition of "shellfish") is combined with sec. 5671 to create the proposed sec. 45500, but the definition of shellfish is not included. The tentative recommendation cross-reference table indicates that sec. 5669 is moved to a proposed sec. 45520, but there is no sec. 45520 in the proposed Fish and Wildlife Code and a definition for "shellfish" cannot be located in the proposed code.	CDFW agrees that the reference in sec. 5671 should be changed to the "Department of Public Health."	1
45510(a)	5672	No comment (but see comment to sec. 45500 relating to same revision)	No comment (but see comment to sec. 45500 relating to same revision)	1
45515	5674	No comment	CDFW agrees that the reference in sec. 5674 should be changed to the "Department of Public Health."	1
46010	5522(c)	FGC notes that in years past, an abalone stamp fee was used for commercial abalone fisheries, but currently there is no active commercial fishery in California. The recreational abalone fishery uses an abalone report card, but currently there is no active recreational fishery in California. Given the two different tools used for funding purposes, FGC believes referring to "an abalone report card or stamp" is appropriate. FGC also notes that sec. 5522 applies to an Abalone Recovery and Management Plan, which was developed and has been used for managing the abalone fishery; while a significant portion of the section will soon be obsolete, the guidelines in sec. 5522 are important context during the current development of an abalone fishery management plan.	Sec. 5522(c) can be amended to refer to an "abalone report card" in lieu of an "abalone stamp". However, there is no commercial or recreational fishery currently and the Abalone Recovery and Management Plan is being replaced by an Abalone fishery management plan.	4
46405	8475	FGC agrees that sec. 8475 is not intended to only apply to freshwater clams used as bait.	CDFW agrees that sec. 8475 is not intended to only apply to freshwater clams used a bait as suggested by the current article it is under titled "Fresh-water Fish for Bait".	4

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
47010	8276.4 (i)-(j)	No comment	Note is informational only. No comment.	6
47060	8276(c)	No comment	Note is informational only. No comment.	6
47070	8278	FGC believes it is unlawful to take any female Dungeness crab, so to apply that restriction in the form of a measurement as it appears in the proposed restatement of sec. 8278 is an indirect way of stating the unlawful activity. FGC believes greater clarity would be achieved by separating the concepts into different subsections (a, b, c), including a direct statement that it is unlawful to take female Dungeness crabs.	It is always unlawful to take female Dungeness crab. The exception in sec. 8278 is intended to apply only to male Dungeness crab of the specific breadth.	4
47150	8276.3	No comment	Two comments: (1) The quality control program operates on a management-area level in conjunction with the states of Oregon and Washington, not a district level. These districts would all be closed and opened simultaneously for a quality delay. (2) The Note is informational only. No comment.	4
47155	8279.1	No comment	Note is informational only. No comment.	6
47300	8276	No comment	Note is informational only. No comment.	6
47365	8276.2(c)	No comment	Note is informational only. No comment.	6
47375	8276.2(d)	No comment	Note is informational only. No comment.	6
47450(a)	8284(a)	Reorganization of the Fish and Game Code is outside the scope of the current review.	CDFW agrees that sec. 8284(a) should also be made subject to secs. 8834 and 8834.5.	4
47460(b)	9011(a)(3)	No comment	CDFW is not commenting on CLRC's recodification of the code at this time. That said, sec. 9011(a)(3) can be made subject to secs. 8834, 8834.5, 9012 and the other provisions of sec. 9011.	4
47465	9011(c)	FGC agrees that sec. 9011(c) is obsolete and need not be continued.	Sec. 9011(c) can be deleted. Obsolete.	1
47620	8276.5 (a)(1)-(2)	No comment	Two comments. (1) The second sentence of sec. 8276.5(a)(1)(G) can be deleted. Obsolete. (2) Comment is informational only. No comment.	1
47650	8276.5 (a)(8)	No comment	Two comments: (1) Sec. 8276.5(a)(8) can be repealed. Obsolete. Also, sec. 8276.5(a)(1)(G)(2) can be repealed. Obsolete. (2) Comment is informational only. No comment.	1
47655	8276.5 (c)-(d)	No comment	Note is informational only. No comment.	6

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
47660	8276.5 (e)-(f)	No comment	Note is informational only. No comment.	6
47665	8276.5(i)	No comment	Note is informational only. No comment.	6
47800	8276.4(a)	No comment	Note is informational only. No comment.	6
47805	8276.4 (b)-(c)	No comment	Note is informational only. No comment.	6
47810	8276.4(d)	No comment	Note is informational only. No comment.	6
47815	8276.4(e)	No comment	Note is informational only. No comment.	6
47820	8276.4(f)	No comment	Note is informational only. No comment.	6
47825	8276.4(g)	No comment	Note is informational only. No comment.	6
47835	8276.4(j)	No comment	Note is informational only. No comment.	6
47850	8276.1(a)	No comment	Note is informational only. No comment.	6
47855(a)	8276.1(b)	No comment	Note is informational only. No comment.	6
47855(b)	8276.1(e)	No comment	Note is informational only. No comment.	6
47860	8276.1(c)	No comment	Note is informational only. No comment.	6
47865	8276.1(d)	No comment	Note is informational only. No comment.	6
47870	8276.1(f)	No comment	Note is informational only. No comment.	6
47900	8280.1(a)	No comment	No comment	6
47910	8280.1(e), 8280.6(d)	No comment	No comment	6
48100	8280.1(b)	No comment	No comment	6
48105	8280.1(c)	No comment	No comment	6
48110	8280.2 (a)-(e)	No comment	No comment	6
48115	8280.1(e), 8280.2(f)	No comment	No comment	6
48655	9011(b)	No comment	CDFW is not commenting on CLRC's recodification of the code at this time. That said, sec. 9011(b) can be amended to make the section also subject to secs. 8834, 9011(a) and 9012.	6
49150	none	No comment	CDFW agrees that krill are crustaceans.	6
49610	9001.7(k)	FGC believes that the reference in sec. 9001.7(k) was intended to be Article 5 of Chapter 2 of Part 3 of Division 6 (governing lobster).	CDFW agrees that the reference in sec. 9001.7(k) was intended to be Article 5 of Chapter 2 of Part 3 of Division 6 (governing lobster).	1
49700	8250.5(a), 9010(a)	FGC believes that removing "for commercial purposes" from sec. 8250.5(a) does not provide a clear benefit and, therefore, is a significant substantive change. Lobster can be	CDFW believes that removing "for commercial purposes" from sec. 8250.5(a) would cause a significant substantive change that is not beneficial. Lobster can be taken commercially or	6

Proposed Section	Existing Section	Fish and Game Commission	Department of Fish and Wildlife	Category
		taken commercially or recreationally; by removing "for commercial purposes" the statute becomes less clear.	recreationally and by removing "for commercial purposes" the statute becomes unclear.	
49710	8258, 9010(b)	Reorganization of the Fish and Game Code is outside the scope of the current review. However, FGC notes that sec. 8258 is subject to the prohibition on taking lobsters within 75 feet of piers, etc. as specified in sec. 9010(b).	CDFW is not commenting on the reorganization of the code at this time. That said, sec. 8258 is subject to the prohibition on taking lobsters within 75 feet of piers, etc. as specified in sec. 9010(b).	6
50655	1068	No comment	Sec. 1068 can be repealed. Obsolete.	1
51100(a)	8595(a), 8842(a)	The combining and reorganizing of secs. 8595(a) and 8842(a) is outside the scope of the current review.	The combining and reorganizing of secs. 8595(a) and 8842(a) is beyond the scope of CDFW's review at this time.	6
51405	8399.1	CLRC note (1): FGC believes that, under sec. 8399.1(a)(1), a light may not be displayed to attract squid from a seine skiff, though a light may be displayed by a seine skiff for navigation or safety purposes. CLRC note (2): FGC believes that the "vessel" in question in subdivision (a)(3) applies to any vessel except the associated seine skiff deployed from the seiner vessel taking squid.	Two comments. (1) Under sec. 8399.1(a)(1), a light may not be displayed to attract squid from a seine skiff, however a light may be displayed by a seine skiff for navigation or safety purposes. (2) The "vessel" in question applies to any vessel except the associated seine skiff deployed from the seiner vessel taking squid.	4