

Memorandum 2021-57

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 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 consideration of public comments into two phases, with “Phase One” addressing comment on purely technical issues that were raised in Notes within the tentative recommendation. The Phase One comments were submitted by the Fish and Game Commission (hereafter, “FGC”), and the Department of Fish and Wildlife (hereafter, “DFW”).⁴

The Commission also decided to prepare a draft recommendation that would address the Phase One issues in existing law (rather than in the proposed recodification).⁵

This memorandum continues the “Phase One” changes proposed by the Commission, pursuant to a methodology that divides the comments into different categories, based on their posture.⁶ However, it only addresses one category of

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. The comments discussed in this memorandum are reproduced in the attached Exhibit.

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

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

comments, those that indicated that a proposed change would be unproblematic, but without expressly approving of the change.

The staff has followed up with DFW about those items. Where they objected to a proposed change, it has been set aside. The approved changes are presented below.

This memorandum is the first time that the proposed changes have been set out in proposed statutory language, for implementation in existing Fish and Game Code sections. **For that reason, the staff is recommending only provisional approval of the changes set out below.** The commenters should be given time to be sure that the changes they approved in the abstract are also acceptable as drafted.

With that said, the staff intends to present this memorandum as a proposed consent item. Unless a Commissioner wishes to discuss an item, it will be presented for approval without staff presentation.

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.

Proposed Section 4492 (Existing Section 2584(b)-(h))

§ 2584 (amended). Penalty process

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

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

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

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

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

(e) The director, after investigation of the facts and circumstances, may issue a complaint to any person on whom a civil an administrative penalty may be imposed pursuant to Section 2582 or 2583. The complaint shall allege the acts or failures to act that constitute a basis for a civil an administrative penalty and the amount of the proposed civil administrative penalty. The complaint shall be served by personal service or certified mail and shall inform

the person so served that a hearing shall be conducted within 60 days after the person has been served, unless the person waives the right to a hearing. If the person waives the right to a hearing, the department shall issue an order setting ~~liability~~ the penalty in the amount proposed in the complaint. If the person has waived the right to a hearing or if the department and the person have entered into a settlement agreement, the order shall be final.

(c) If the director issues a complaint pursuant to subdivision (b), the director shall appoint a qualified referee or hearing board, composed of one or any combination of the following persons:

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

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

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

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

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

director may reduce the proposed penalty and adopt the balance of the proposed decision.

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

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

(h) The records of the case, after all appeals are final, are public records, as defined in ~~subdivision (d) of Section 6252~~ Section 7920.530 of the Government Code.

Comment. Section 2584 is amended to replace references to a “civil penalty” or “civil liability” with references to an “administrative penalty,” and make other nonsubstantive clarification.

The section is also amended to update a cross-reference, and make the section gender neutral.

In preparing the proposed language for Section 2584, the staff spotted an issue that was not addressed in the tentative recommendation. In subdivision (d), there is a reference to “that person” that seems problematically vague. **The staff will work further with the Commenters to see whether there is an acceptable way to address that apparent problem.**

Proposed Section 4900 (Existing Section 12002.6)

§ 12002.6 (amended). Suspension or revocation of registration for specified violations

12002.6. (a) ~~Notwithstanding Sections 12000, 12001, and 12002~~ In addition to any other applicable penalty, a commercial boat registration may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon the second conviction in three years of the registrant, or the registrant’s agent, servant, employee, or any other person acting

under the registrant's direction or control, for a violation of any of the following provisions or regulations adopted pursuant thereto:

(1) Section 5521 or 5521.5.

(2) Article 2 (commencing with Section ~~8150~~ 8150.5), Article 3 (commencing with Section 8180), Article 4 (commencing with Section ~~8210~~ 8210.2), Article 5 (commencing with Section 8250), Article 6 (commencing with Section 8275), Article 9 (commencing with Section 8370), Article 13 (commencing with Section 8495), and Article 15 (commencing with Section 8550) of Chapter 2 of Part 3 of Division 6.

(3) Article 1 (commencing with Section 8601), Article 2 (commencing with Section ~~8620~~ 8623), Article 4 (commencing with Section 8660), Article 5 (commencing with Section ~~8685~~ 8680), Article 6 (commencing with Section 8720), Article 7 (commencing with Section 8750), Article 8 (commencing with Section 8780), and Article 10 (commencing with Section 8830) of Chapter 3 of Part 3 of Division 6.

(4) Article 1 (commencing with Section 9000) of Chapter 4 of Part 3 of Division 6.

(b) The commercial boat registration shall not be revoked unless both the first and second convictions are related to the boat for which the commercial boat registration is to be revoked, and are for violations ~~which~~ that occurred when the person convicted was the registrant or the registrant's agent, servant, or employee, or acting under the registrant's direction or control.

Comment. Subdivision (a) of Section 12002.6 is amended for clarity, to make a technical correction, and to correct four erroneous cross-references.

The cross-reference corrections in Section 12002.6(a)(2) and (3) were not made in the tentative recommendation, because the reorganization obviated the need to continue the corrected section numbers. Now that the reform would be implemented without the reorganization, the numbers need to be corrected. **Commenters who are reviewing the draft language should be aware that the cross-reference corrections are new.**

Proposed Section 4934 (Existing Section 12002.4)

§ 12002.4 (amended). Commercial boat registration suspension for unlawful sale or purchase of fish

12002.4. (a) ~~Notwithstanding Sections 12000, 12001, and 12002, a~~ In addition to any other applicable penalty, the commercial boat registration of a commercial passenger fishing boat may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of the registrant, or the registrant's agent, servant, employee, or any

other person acting under the registrant's direction or control, for a violation of Section 7121 or ~~the regulations~~ a regulation adopted pursuant ~~thereto to that section,~~ if the violation in question ~~involved a vessel licensed pursuant to Section 7920~~ involves that boat.

(b) ~~Notwithstanding Sections 12000, 12001, and 12002, a~~ In addition to any other applicable penalty, the commercial boat registration of a ~~vessel licensed pursuant to Section 7920~~ commercial passenger fishing boat may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of any ~~other person other than the person specified in subdivision (a),~~ for a violation of Section 7121, if the fish or ~~amphibia~~ amphibians involved in the violation were taken from ~~the vessel that boat,~~ and ~~that the person committing the violation had committed a prior violation of Section 7121 involving that boat within the previous three years on the vessel.~~

(c) ~~The~~ A commercial boat registration shall not be revoked under this section for a violation ~~which is unrelated to the vessel for which the commercial boat registration is to be revoked. Any violation~~ committed without the knowledge of the master, or an agent or employee of the registrant, ~~is unrelated to the vessel.~~

Comment. Section 12002.4 is amended for clarity. Principles of collateral estoppel may have application to a license revocation or suspension proceeding under this section. *Cf. People v. Sims* (1982) 32 Cal.3d 468, 651 P.2d 321, 186 Cal.Rptr. 77 (welfare fraud); *Gikas v. Zolin* (1993) 6 Cal.4th 841, 863 P.2d 745, 25 Cal.Rptr.2d 500 (driving under the influence).

Proposed Section 8015 (Existing Section 2001(c))

§ 2001 (amended). Season and possession limits

2001. (a) It is unlawful to take a mammal, bird, fish, reptile, or amphibian outside of an established season or to exceed a bag limit or possession limit established in this code or by a regulation adopted by the commission. Violation of an established season, bag limit, or possession limit may be charged as a violation of this section or of the specific code section or regulation that establishes the season or limit.

(b) Unless otherwise provided, it is unlawful to possess a fish, reptile, or amphibian, except during the open season where the fish, reptile, or amphibian was taken or during the 10-day period immediately following that open season. A possession limit applicable during the open season applies during that 10-day period.

(c) Except as provided in Section 3080, it is unlawful to possess a game bird or any mammal except during the open season where taken.

Comment. Section 2001 is amended for clarity.

Proposed Section 8115 (Existing Section 2003)

§ 2003 (amended). Prize

2003. (a) Except as specified in subdivisions (b), (c), (d), and (e), it is unlawful to offer a prize or other inducement as a reward for the taking of a game bird, or the taking of any mammal, fish, reptile, or amphibian, in an individual contest, tournament, or derby.

(b) The department may issue a permit to a person authorizing that person to offer a prize or other inducement as a reward for the taking of a game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons who are under 16 years of age or have a physical or mental disability, and the primary purpose of the contest, tournament, or derby is to introduce those anglers to or educate them about fishing. All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

(c) This section does not apply to a person conducting what is generally known as a frog-jumping contest, or, in waters of the Pacific Ocean, what is generally known as a fish contest.

(d) This section does not apply to a person conducting an individual contest, tournament, or derby for the taking of a game bird or game mammal, if the total value of all prizes or other inducements is less than five hundred dollars (\$500) for the individual contest, tournament, or derby.

(e) (1) As used in this subdivision:

(A) "Event" means a competition event on lands managed by the department.

(B) "Prize compensation" includes prize or purse money, other prizes, goods, or other compensation.

(2) The department, for any event that awards prize compensation to competitors in gendered categories, shall require as a condition of a permit pursuant to this section that, for any participant level that receives prize compensation, the prize compensation for each gendered category be identical at each participant level. The department shall not approve a permit for an event that does not comply with this condition.

Comment. Section 2003 is amended to make clear that (1) the general prohibition in subdivision (a) applies to game birds, as well as all mammals, fish, reptiles and amphibians, and (2) the exception in subdivision (d) applies only to game birds and game mammals.

In subdivision (b), the word “disability” is not used in any defined sense.

Proposed Section 8145 (Existing Section 5500)

§ 5500 (amended). Explosives

5500. It is unlawful to use explosives in the waters of ~~this~~ the state inhabited by fish, except ~~under~~ in one of the following circumstances:

(a) Pursuant to a permit first obtained by the user from the department, consistent with terms and conditions set by the commission, or except in case of . The department’s decision to grant or deny a permit may be appealed to the commission by any person.

(b) In an emergency, to remove an accidental obstruction to the flow of water. Any person may appeal the department’s decision to grant or deny a permit to the commission.

Comment. Section 5500 is amended for clarity.

Proposed Section 8720 (Existing Section 308)

§ 308 (amended). Restricted take in District 22

308. Notwithstanding any other provisions of this code, in District 22 the taking of birds, mammals, fish, ~~amphibia~~ amphibians, or reptiles shall be subject to regulations ~~prescribed~~ adopted, from time to time, by the commission, except that it is unlawful in District 22 to take birds or mammals within one-eighth mile of any gallinaceous guzzler, if the area surrounding it is posted in the manner prescribed by the commission. In the Colorado River, in District 22, the commission may ~~prescribe such~~ adopt regulations in agreement with the proper authorities of the State of Arizona.

Comment. Section 308 is amended for clarity.

Proposed Section 9565 (Existing Section 3005(d))

§ 3005 (amended). Other prohibited methods of taking

3005. (a) It is unlawful to take birds or mammals with any net, pound, cage, trap, set line or wire, or poisonous substance, or to possess birds or mammals so taken, whether taken within or without this state, except as provided in this code or, when relating to ongoing mining operations, in accordance with a mitigation plan approved by the department.

(b) (1) Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of birds and mammals.

When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis.

(2) Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including ponding of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds.

(3) The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan shall result in an overall reduction in take of avian or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site-specific basis and may provide for offsite mitigation measures designed to reduce avian mortality. The mine operator shall submit monthly monitoring reports on avian mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures.

(4) The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved.

(5) The mining operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of copies, as determined by the department, of the mitigation plan for public review.

(c) Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section.

(d) This section does not apply to ~~the~~ any of the following:

(1) The lawful taking of fur-bearing mammals, nongame birds, or nongame mammals, ~~or,~~

(2) The lawful taking of mammals found to be injuring crops or property, ~~to the~~

(3) The taking of birds or mammals under depredation permits, ~~to,~~

(4) The taking of birds or mammals by employees of the department acting in an official capacity, ~~or to.~~

(5) The taking of birds or mammals in accordance with the conditions of a scientific or propagation permit by the holder of that permit.

Comment. Subdivision (d) of Section 3005 is amended for clarity.

Proposed Section 10400 (Existing Section 3049)

§ 3049 (amended). Legislative declaration

3049. (a) It is the intent of the Legislature in enacting this article to ensure the health and safety of its citizens engaged in activities requiring the use of hunting implements.

(b) The Legislature finds and declares that individuals who engage in hunting should possess an adequate understanding of hunter safety practices, principles of conservation, and ~~sportsmanship~~ positive sporting behavior.

(c) It is also the intent of the Legislature that persons so engaged be mindful of their responsibilities to others, toward wildlife, and toward their natural environment. The department shall take all steps necessary to carry out the provisions of this article.

Comment. Section 3049 is amended to make the section gender neutral, and add subdivision designations.

Proposed Section 10405 (Existing Section 3051(a), (c))

§ 3051 (amended). Hunter instruction

3051. (a) The department shall provide for a course of instruction in hunter education, principles of conservation, and ~~sportsmanship~~ positive sporting behavior, and for this purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of hunter safety, principles of conservation, and ~~sportsmanship~~ positive sporting behavior.

(b) The department may designate as a hunter education instructor any person found by it to be competent to give instruction in the courses required in this article.

(c) A hunter education instructor shall issue a certificate of completion as provided by the department to a person who completes a course of instruction in hunter safety, principles of conservation, and ~~sportsmanship~~ positive sporting behavior.

(d) The department shall prescribe a minimum level of skill and knowledge to be required of all hunter education instructors, and may limit the number of students per instructor in all required classes.

(e) The department may revoke the certificate of an instructor when, in the opinion of the department, it is in the best interest of the state to do so.

(f) In order to recruit and retain hunter education instructors, the department shall offer special hunting opportunities to qualified hunter education instructors by providing a limited number of existing tags and other hunting opportunities. The department may provide these tags and hunting opportunities through any of the following methods:

(1) The private lands management program described in Article 5 (commencing with Section 3400) of Chapter 2.

(2) The Shared Habitat Alliance for Recreational Enhancement (SHARE) program described in Article 3 (commencing with Section 1570) of Chapter 5 of Division 2.

(3) Entering into cooperative agreements with federal, state, and local agencies that hold title to, or administer, lands or waters.

(4) Entering into cooperative agreements with landowners or tenants seeking depredation permits for game mammals as described in Section 4188.

(5) Authorizing a maximum of 15 tags from the annual tag quota, as determined by the department.

(g) The department shall determine eligibility criteria for hunter education instructors seeking the hunting opportunities offered pursuant to subdivision (f). The department shall offer hunting opportunities to eligible hunter education instructors only by random drawing.

(h) The department may adopt regulations to implement this section.

Comment. Section 3051 is amended to make the section gender neutral.

Proposed Sections 11005, 11010, 11020, 11155 (Existing Section 4004(c)-(f))

§ 4004 (amended). Unlawful use of trap

4004. It is unlawful to do any of the following:

(a) Use a steel-jawed leghold trap, or use any trap with saw-toothed or spiked jaws.

(b) Set or maintain ~~traps~~ a trap that ~~do~~ does not bear a number or other identifying mark as provided in this subdivision. ~~registered to the department or, in the case of federal, state, county, or city agency, bear the name of that agency., except that traps~~ If the trap is set pursuant to Section 4152 or 4180, it shall bear an identifying mark in a manner specified by the department. In all other cases, the trap shall bear a number or other identifying mark registered to the department, or, in the case of federal, state, county, or city agency, bear the name of that agency. No registration fee shall be charged pursuant to this subdivision.

(c) Fail to visit and remove all animals from traps at least once daily. If the trapping is done pursuant to Section 4152 or 4180, the inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

(d) Use a conibear trap that is larger than 6 inches by 6 inches, unless the trap is partially or wholly submerged in water. Unless prohibited by the department as a permit condition, a lawfully set conibear trap that is 10 inches by 10 inches or less may be set pursuant to subdivision (g) of Section 465.5 of Title 14 of the California Code of Regulations.

(e) When any conibear trap is set on publicly owned land or land expressly open to public use, fail to post signs at ~~every~~ each entrance and exit to the property indicating the presence of conibear traps, and at least four additional signs ~~posted~~ within a radius of 50 feet of ~~the~~ each trap, one in each cardinal direction, with lettering that is a minimum of three inches high stating: "Danger! Traps Set For Wildlife. Keep Out." Signs required to be posted by this subdivision shall be maintained and checked daily.

(f) Kill any trapped mammal in accordance with this section by intentional drowning, injection with any chemical not sold for the purpose of euthanizing animals, or thoracic compression, commonly known as chest crushing. This subdivision ~~shall not be construed to prohibit~~ does not apply to the use of a lawfully set conibear ~~traps~~ trap that is set partially or wholly submerged in water for to trap beaver or muskrat, or the use of a lawfully set colony ~~traps~~ trap that is set in water for to trap muskrat.

Comment. Section 4004 is amended for clarity.

Proposed Section 13205 (Existing Section 7151(d))

§ 7151 (amended). Free sport fishing licenses

7151. (a) Upon application to the department, the following persons, if they have not been convicted of any violation of this code, shall be issued, free of any charge or fee, a sport fishing license, that authorizes the licensee to take any fish, reptile, or amphibian anywhere in this state for purposes other than profit:

(1) Any blind person upon presentation of proof of blindness. "Blind person" means a person with central visual acuity of 20/200 or less in the better eye, with the aid of the best possible correcting glasses, or central visual acuity better than 20/200 if the widest diameter of the remaining visual field is no greater than 20 degrees. Proof of blindness shall be by certification from a qualified licensed optometrist or ophthalmologist or by presentation of a license issued pursuant to this paragraph in any previous license year.

(2) Every resident Native American who, in the discretion of the department, is financially unable to pay the fee required for the license.

(3) Any ~~developmentally disabled~~ person with a developmental disability, upon presentation of certification of that disability from a qualified licensed physician, or the director of a state regional center for ~~the developmentally disabled~~ persons with developmental disabilities.

(4) Any person who is a resident of the state and who is so severely physically disabled as to be permanently unable to move from place to place without the aid of a wheelchair, walker, forearm crutches, or a comparable mobility-related device. Proof of the disability shall be by certification from a licensed physician or

surgeon or, by presentation of a license issued pursuant to this paragraph in any previous license year after 1996.

(b) Sport fishing licenses issued pursuant to paragraph (2) of subdivision (a) are valid for the calendar year of issue or, if issued after the beginning of the year, for the remainder thereof.

(c) Sport fishing licenses issued pursuant to paragraphs (1), (3), and (4) of subdivision (a) are valid for five calendar years, or if issued after the beginning of the first year, for the remainder thereof.

(d) Upon application to the department, the department may issue, ~~free of any charge or fee, a group sport fishing license, free of any charge or fee, to groups of mentally or physically handicapped persons~~ a group of persons with mental or physical disabilities who are under the care of a any of the following entities:

(1) A certified federal, state, county, city, or private licensed care center that is a community care facility as defined in subdivision (a) of Section 1502 of the Health and Safety Code, ~~to organizations .~~

(2) An organization exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code, ~~or to schools or school districts.~~

(3) A school or school district.

(e) ~~Any~~ The organization that applies for a group fishing license listed in subdivision (d) shall provide evidence that it is a legitimate private licensed care center, tax-exempt organization, school, or school district.

(f) The license shall be issued to the person in charge of the group and shall be in ~~his or her~~ that person's possession when the group is fishing.

(g) ~~Employees of private licensed care centers, tax-exempt organizations, schools, or school districts are exempt from Section 7145 only while assisting physically or mentally disabled persons fishing under the authority of a valid license issued pursuant to this section.~~ The license shall ~~include~~ identify the location ~~where the activity will take place,~~ and the date or dates ~~of the activity for which fishing is authorized,~~ and the maximum number of people that may be included in the group that will be fishing. The licenseholder shall notify the local department office before sport fishing and indicate where, when, and how long the group will ~~fish~~ be sport fishing.

(h) Employees of the organization listed in subdivision (d) are exempt from Section 7145 while assisting the group that is sport fishing pursuant to the license.

(e) (i) Upon application to the department, the department may issue, free of any charge or fee, a sport fishing license to a nonprofit organization for day-fishing trips that provide recreational rehabilitation therapy for active duty members of the United States military who are currently receiving inpatient care in a military or Veterans Administration hospital and veterans with service-connected disabilities. The license shall be valid for the calendar year of issue or, if issued after the beginning of the year, for the remainder of that year. The license shall be issued to the person in charge of the group, and shall be in the licenseholder's possession when the group

is fishing. The organization shall notify the local department office before fishing and indicate where, when, and how long the group will fish. To be eligible for a license under this subdivision, an organization shall be registered to do business in this state or exempt from taxation under Section 501(c) of the federal Internal Revenue Code.

~~(f)~~ (j) On January 15 of each year, the department shall determine the number of free sport fishing licenses in effect during the preceding year under subdivisions (a), (d), and ~~(e)~~ (i).

~~(g)~~ (k) There shall be appropriated from the General Fund a sum equal to two dollars (\$2) per free sport fishing license in effect during the preceding license year under subdivisions (a) and (d), as determined by the department pursuant to subdivision ~~(f)~~ (j). That sum may be appropriated annually in the Budget Act for transfer to the Fish and Game Preservation Fund and appropriated in the Budget Act from the Fish and Game Preservation Fund to the department for the purposes of this part.

Comment. Section 7151 is amended for clarity.

Proposed Section 14600 (Existing Section 7852(a), (b))

§ 7852 (amended). Age requirement and fee for commercial fishing license

~~7852. (a) The department shall issue a commercial fishing license to any resident who is 16 years of age or older, upon payment of a base fee of ninety five dollars (\$95) for each resident vessel crewmember or resident vessel operator.~~

~~(b) The department shall issue a commercial fishing license to any nonresident who is 16 years of age or older, upon payment of a base fee of two hundred eighty five dollars (\$285) for a nonresident vessel crewmember or nonresident vessel operator.~~

(a) An applicant for a commercial fishing license must be at least 16 years of age on the date the license is issued.

(b) The fee for a commercial fishing license is as follows:

(1) For a resident, a base fee of ninety-five dollars (\$95).

(2) For a nonresident, a base fee of two hundred eighty-five dollars (\$285).

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

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

(e) Nothing in this section affects any other provision of law relating to the employment of minors.

Comment. Section 7852 is amended for clarity.

Proposed Section 14870 (Existing Section 7856(e))

§ 7856 (amended). Preparation of fish on commercial fishing vessel for human consumption

7856. Notwithstanding any other provision of this division, except as provided in subdivision (f) and except when prohibited by federal law, fish may be prepared for human consumption aboard a commercial fishing vessel only under the following conditions:

(a) The fish are taken under all existing commercial fishing laws and regulations and, except as provided in subdivision (f), the fish is of a species and size that can be lawfully taken under sportfishing regulations in the area where taken and are taken incidental to normal commercial fishing operations.

(b) The fish is separated from other fish and stored with other foodstuff for consumption by the crew and passengers aboard the vessel.

(c) The fish shall not be bought, sold, offered for sale, transferred to another person, landed, brought ashore, or used for a purpose other than consumption by the crew and passengers.

(d) (1) All fish shall be maintained in a condition that the species can be determined, and the size or weight can be determined if a size or weight limit applies, until the fish is prepared for immediate consumption.

(2) If the fish is filleted, a patch of skin shall be retained on each fillet as prescribed by the commission in the sportfishing regulations until the fish is prepared for immediate consumption.

(3) Fillets from fish possessed under sportfishing regulations shall be of the minimum length prescribed by commission regulations.

(e) ~~A fish that may be possessed under sportfishing regulations shall not be possessed in excess of the sport bag limit for each crew member and passenger~~ The quantity of fish prepared shall not exceed the aggregate sportfishing bag limit for that fish applicable to the total number of crew members and passengers on board the vessel.

(f) Notwithstanding other provisions of this section, kelp bass, sand bass, spotted bass, yellowfin croaker, spotfin croaker, California corbina, and marlin, shall not be possessed aboard a commercial fishing vessel while that vessel is on a commercial fishing trip. Lobster, salmon, or abalone shall not be possessed aboard a commercial fishing vessel while that vessel is on a commercial fishing trip for preparation for human consumption pursuant to this section unless that lobster, salmon, or abalone is taken and possessed in compliance with all applicable laws pertaining to commercial fishing methods of take, licenses, permits, and size limits. Sturgeon or striped bass shall not be possessed aboard a commercial fishing vessel. A person shall not take or possess a fish on a commercial fishing vessel under a sportfishing license while that vessel is engaged in a commercial fishing activity,

including going to or from an area where fish are taken for commercial purposes.

Comment. Subdivision (e) of Section 7856 is amended for clarity.

Proposed Section 18815, 18820, 18825 (Existing Section 9027.5(c))

§ 9027.5 (amended). Additional restrictions on use of fishing line in specified areas

9027.5. (a) (1) Notwithstanding Section 9026, 9028, or 9029 in the area described in subdivision (b), it is unlawful to use more than 150 hooks on a vessel to take fish for commercial purposes when using fishing lines authorized pursuant to this article.

(2) In the area described in subdivision (b), not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this article.

(3) Each fishing line used pursuant to this article that is not attached to a vessel fishing in the area described in subdivision (b) shall be buoyed, and the commercial fishing license identification number issued pursuant to Section 7852 to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers not less than two inches in height.

(b) This section applies only to waters within one mile of the mainland shore in Fish and Game Districts 17, 18, and 19.

~~(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or rays. The exemption in this subdivision does not apply if all of the fish possessed by persons aboard the vessel consist of at least 80 percent by number of halibut, white sea bass, sharks, skates, and rays.~~

Subdivision (a) does not apply to persons who are fishing for halibut, white sea bass, sharks, skates, or rays, south of a line extending due west from Point Conception, if at least 80 percent of the fish possessed by persons aboard the vessel are, by number, halibut, white sea bass, sharks, skates, or rays.

Comment. Section 9027.5 is amended for clarity.

Proposed Section 19505 (Existing Section 8403(c))

§ 8403 (amended). Take of marine species of fin fish

8403. (a) To the extent not in conflict with Section 8607, marine species of fin fish ~~which~~ that are classified as groundfish may be taken under the regulations of the commission.

(b) Marine species of fin fish, including, but not limited to, fin fish ~~which~~ that are classified as groundfish, may be taken with fin fish traps, subject to Article 1 (commencing with Section 9000) of Chapter

4, under regulations of the commission. The regulations may limit the number of fin fish traps ~~which~~ that any vessel may use, designate the areas in which the traps may be used, and prescribe other limitations on the use of fin fish traps.

(c) ~~Any other species not~~ Except as otherwise prohibited, any species may be taken in a fin fish trap.

Comment. Section 8403 is amended for clarity.

Proposed Section 21850 (Existing Section 7706)

§ 7706 (amended). Complaint alleging violation

7706. (a) A written complaint may be made to the commission against any person who violates Section 7700 to 7705, inclusive, 7707, 7708, or 8075 to 8080, inclusive, ~~or 8153~~, or any regulation adopted thereunder, by any person having information or knowledge of the violation. If the person charged in the complaint is found guilty of the offense charged, the commission may suspend, for a period not to exceed 90 days, any license issued by any state board or officer to that person to take, buy, sell, can, or preserve fish or fishery products. No other license shall be issued to that person during the period of suspension.

(b) The proceedings on a complaint shall be conducted at one of the commission's regularly scheduled meetings.

Comment. Section 7706 is amended for clarity, and to delete a cross-reference to a repealed provision.

The section is also amended to add subdivision designations.

Proposed Section 24600 (Existing Section 15512)

§ 15512 (amended). Compensation to owner of destroyed plant or animal

15512. (a) If aquatic plants or animals are destroyed pursuant to subdivision (e) of Section 15505, and a claim is submitted pursuant to Section 15513, the owner shall be promptly paid from the General Fund an amount equal to 75 percent of the replacement value of the plants or animals, less the value determined by the department of any replacement stock provided by the department under subdivision (b) ~~if the claim is submitted pursuant to Section 15513~~. If the replacement value is not settled between the owner and the department, the replacement value shall be determined by an appraiser appointed by the director and an appraiser appointed by the owner. Appraiser's fees shall be paid by the appointing party. Disputes between these two appraisers shall be submitted to arbitration under the Commercial Arbitration Rules of the American Arbitration Association.

(b) If the department provides replacement stock to an aquaculturist whose plants or animals are destroyed pursuant to

subdivision (e) of Section 15505, the amount to be paid to the aquaculturist pursuant to this section shall be reduced by the value of the replacement stock, as determined by the department.

(c) The result of the arbitration or the amount settled between the owner and the department, reduced by the value determined by the department of any replacement stock provided under subdivision (b), may be submitted as a claim by the owner to the Department of General Services pursuant to Section 15513.

Comment. Section 15512 is amended for clarity.

Proposed Section 24715 (Existing Section 15601)

§ 15601 (amended). Application for importation

15601. A written application for the importation of a live aquatic plant or animal that is submitted in conformance with the procedural requirements established by the commission is deemed to be approved ~~where~~ if it has not been denied within 60 days.

Comment. Section 15601 is amended for clarity. The added language provides context, drawn from preceding Section 15600.

Proposed Section 26200 (Existing Section 3300)

§ 3300 (amended). Raising and releasing domesticated migratory game birds for shooting

3300. (a) It is unlawful for any person to engage in the raising and releasing, or the releasing, of domesticated migratory game birds for shooting by persons who pay for that privilege, unless the person has a revocable nontransferable license issued by the department. The licenses may be issued annually by the department, and shall be valid from July 1 through the following June 30, upon payment of a base fee of eighty dollars (\$80), as adjusted under Section 713.

~~(b) Any bird of a species included in the definition of migratory game birds, as defined in Section 3500, which has been held live in captivity is a “domesticated migratory game bird” for purposes of this section, except such a bird that has been released from captivity and any control before attaining six weeks of age. For purposes of this section, a “domesticated migratory game bird” is a migratory game bird held live in captivity at or after six weeks of age.~~

Comment. Section 3300 is amended for clarity.

The section is also amended to add subdivision designations.

See also Section 3500(b) (“migratory game bird”).

There are twelve other code sections that use the term “domesticated migratory game bird” without definition.⁷ **The staff will work further with the commenters**

7. See Sections 3031, 3200, 3216, 3240.5, 3301, 3302, 3303, 3305, 3308, 3309, 3310, 3311.

to determine whether it would be proper to make the proposed definition in Section 3300(b) applicable to any of those sections.

Proposed Section 30510 (Existing Section 3681)

§ 3681 (amended). Take of duck or goose in District 8 and 9

3681. (a) In Districts 8 and 9, it is unlawful to take ~~ducks or geese in any manner~~ a duck or goose below the incoming or outgoing tidewater's edge, or from any blind, boat, floating device, island, islet, or exposed tidal flat ~~except~~ .

(b) ~~Subdivision (a) does not apply~~ on Saturdays, Sundays, Wednesdays, holidays, and the opening and closing days during the prescribed open season ~~except that~~ .

(c) ~~Notwithstanding subdivision (a)~~, the use of boats is permitted to retrieve crippled or dead birds.

Comment. Section 3681 is amended for clarity.

The section is also amended to add subdivision designations.

Proposed Section 31050 (Existing Section 3801)

§ 3801 (amended). Take or possession of English sparrow or starling

3801. (a) ~~Except as provided in Section 3000 and this section, the following nongame birds may be taken or possessed at any time:~~

~~(1) English sparrow (Passer domesticus).~~

~~(2) Starling (Sturnus vulgaris).~~

(b) ~~Notwithstanding Section 3007 or any other provision of this code or regulations made pursuant thereto~~ regulation adopted pursuant to this code requiring the possession of a hunting license, a landowner or lessee, or an agent of either in immediate possession of written authority from the landowner or lessee, shall not be required to obtain a hunting license or a depredation permit to take ~~the following nongame birds~~ a nongame bird listed in subdivision (a) on land owned or leased by the landowner or lessee. ~~Hunters otherwise~~

(c) ~~All other persons taking the following nongame birds a nongame bird listed in subdivision (a) shall be licensed pursuant to Section 3007. The following nongame birds taken in compliance with this section may be taken and possessed by any person at any time, except as provided in Section 3000:~~

~~(a) English sparrows (Passer domesticus).~~

~~(b) Starlings (Sturnus vulgaris).~~

Comment. Section 3801 is amended for clarity.

The section is also amended to add subdivision designations.

Proposed Section 31605 (Existing Section 4180.1)

§ 4180.1 (amended). Immature depredator mammal in den

4180.1. (a) It is unlawful to ~~use snares, hooks, or~~ do either of the following to an immature depredator mammal while it is in its den:

(1) Use a snare, hook, or barbed wire to remove the mammal from the den, or

(2) Use fire to kill the mammal in the den, any immature depredator mammal.

(b) Nothing in this section shall prohibit the use of fire-ignited gas cartridges or other products registered or permitted under the Federal Insecticide, Rodenticide, and Fungicide Act (7 U.S.C. ~~135~~ 136 et seq.).

Comment. Section 4180.1 is amended for clarity, and to update an erroneous reference.

The section is also amended to add subdivision and paragraph designations.

Respectfully submitted,

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