



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. SECRETARY OF STATE

NOTICE IS HEREBY GIVEN that the Secretary of State is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Secretary of State at its office not later than 5:00 p.m. on October 10, 2014.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Secretary of State, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: August 22, 2014, through October 10, 2014.

AUTHORITY AND REFERENCE

Under authority established in California Government Code section 12172.5, the California Secretary of State may adopt regulations to assure the uniform application and administration of state election laws.

Further under authority established in Elections Code sections 2500, 2501 and 19212, the Secretary of State shall adopt rules and regulations governing the election

management system, ballot marking system, and the voting system source code escrow.

Authority cited: Sections 2501 and 19212, Elections Code; Section 12172.5, Government Code

Reference cited: Sections 2500, 2501 and 19212, Elections Code

INFORMATIVE DIGEST

A. Informative Digest

Current regulations require ballot tally source code to be stored in escrow. The current ballot tally regulations were promulgated in 1995 and have not been changed since. AB 829 and SB 360 added election management system, ballot marking system, and voting systems source codes to be placed in escrow, respectively.

The purpose of revising sections 20610 through 20682 of Title 2, Division 7, Chapter 6 of the California Code of Regulations is as follows:

1. Reflect the changes in current business practices
2. Remove requirements that are no longer relevant
3. Add EMS source code in accordance with AB 829 (Fong)
4. Replace ballot tally software program source code with the term "voting system source code(s)" in accordance with SB 360 (Padilla)
5. Add ballot marking system source code(s) in accordance with SB 360 (Padilla)

B. Policy Statement Overview/Anticipated Benefits of Proposal

Due to the changes in technology and improving business standards, many of the current regulations have become obsolete or insufficient to effectively secure the voting system source codes process.

The proposed changes provide current certified voting system source codes, as well as voting system source codes seeking certification, clear regulations that reflect current business practices and appropriate security measures. The updated regulations incorporate the changes in technology and ensure the introduction of new technology is implemented in a manner that does not jeopardize the security of the ballots. Accordingly, there are no direct benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

C. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation for any regulations relating to this area, the Secretary of State has found that these are the only regulations dealing with escrow of source codes. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations. This regulatory proposal updates existing regulations relating to the escrow of source codes.

- D. Documents Incorporated by Reference: Yes. The *Escrow Company and Facility Application (2014)* is incorporated by reference.
- E. Documents Relied Upon in Preparing the Regulations: Economic Impact Assessment

ballot marking, election management systems, and source code escrow.

Economic Impact Assessment/Analysis Summary Comments: This proposed regulation is not a “major regulation” therefore there is no economic impact assessment comments from the Department of Finance nor response.

FISCAL IMPACT ESTIMATES AND ECONOMIC IMPACT ASSESSMENT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: No.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact: The Secretary of State has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Impact on Jobs/New Businesses: The Secretary of State has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Due to the changes in technology and improving business standards, many of the current regulations have become obsolete or insufficient.

The proposed changes provide regulations that reflect current business practices. Accordingly, there are no direct benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment.

Cost Impact on Representative Private Person or Business: The cost impact will be a sum of approximately \$12,000 that is split between two election management system companies and another sum of approximately \$12,000 split between four voting system companies to store source code in escrow.

Effect on Housing Costs: None.

Effect on Small Business: The Secretary of State has determined that the proposed regulations will affect small businesses. The small businesses impacted will be companies that are involved with voting systems,

CONSIDERATION OF ALTERNATIVES

The Secretary of State must determine that no reasonable alternative it considered to the regulations or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

Any interested person may present statements or arguments relevant to the above determinations.

INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The Secretary of State has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the Secretary of State website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the Secretary of State contact or on the website listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. You may obtain a copy of the Final Statement of Reasons once it has been prepared from the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Ryan Macias
 Secretary of State
 1500 11th St., 6th Floor
 Sacramento, CA 95814
 (916) 651-7835

Or to: Ryan.Macias@sos.ca.gov

The back up contact person is:

Susan Lapsley
 Secretary of State
 1500 11th St., 6th Floor
 Sacramento, CA 95814
 (916) 651-7837

Or to: Susan.Lapsley@sos.ca.gov

Website Access: Materials regarding this proposal can be found at www.sos.ca.gov.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 702, 5508, 5509, 7071 and 8587.1, of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 215, 220, 240, 1802, 5508, 5509, 7071 and 8585.5 of the Fish and Game Code; Title 50, Code of Federal Regulations, Part 660, Subpart G; and Section 27.20, Title 14, California Code of Regulations (CCR), proposes to amend sections 1.91, 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 27.65, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.54, 28.55, 28.56, 28.58 and 28.90, Title 14, CCR, relating to recreational fishing regulations for federal groundfish and associated species for consistency with federal rules for 2015 and 2016.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Biennially, the Pacific Fishery Management Council (PFMC) reviews the status of west coast groundfish populations. As part of that process, it recommends groundfish fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Pacific Coast Groundfish Fishery Management Plan (FMP). These recommendations coordinate west coast management of recreational and commercial groundfish fisheries in the federal fishery

management zone (3 to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as federal fishing regulations by the National Marine Fisheries Service (NMFS).

For consistency, the Commission routinely adopts regulations to bring State law into conformance with federal law for groundfish and other federally-managed species.

Summary of Proposed Amendments

The Department of fish and Wildlife is proposing the following regulatory changes to be consistent with PFMC recommendations for federal groundfish regulations in 2015 and 2016. This approach will allow the Commission to adopt State recreational groundfish regulations to timely conform to those taking effect in federal ocean waters in January 2015.

The proposed regulatory changes extend the season length in the Mendocino, San Francisco, and Central Management Areas and increase the allowable depth in the Southern Management Area.

The proposed regulations increase the bag limit for lingcod from two to three fish.

The scientific name for soupfin shark is proposed to be changed to the correct name of *Galeorhinus galeus*.

The proposed regulatory changes would also re-define the species included in “skates” and “other fish” species groups to reflect additions to the FMP. The references to rattail are also proposed to change to the correct name of grenadier.

The references to Drake’s Estero Bay are proposed to change to the correct name of Drake’s Bay.

Subsection 27.35(b)(3) relating to the Cordell Bank Closure Area is proposed to be repealed.

Other changes are proposed to correct spelling errors and to simplify and clarify regulations.

The benefits of the proposed regulations are consistency with federal law, sustainable management of groundfish resources, protection for groundfish stocks that are overfished and rebuilding, and promotion of businesses that rely on recreational groundfish fishing.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202 and 205). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR), with Nearshore Fishery Management Plan regulations (Sections 52.00 through 52.10, Title 14, CCR) and with general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations

and has found no other State regulations related to the recreational take of groundfish.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Mount Shasta Hatchery Museum, 1 North Old Stage Road, Mount Shasta, California, on Wednesday, October 8, 2014, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Airtel Plaza Hotel, 7277 Valjean Avenue, Van Nuys, California, on Wednesday, December 3, 2014, at 8:00 a.m., or as soon thereafter as the matter may be heard.

It is requested, but not required, that written comments be submitted on or before November 20, 2014, at the address given below, or by fax at (916) 653-5040, or by email to FGC@fgc.ca.gov. **Written comments mailed, faxed or emailed to the Commission office, must be received before 12:00 noon on November 26, 2014.** All comments must be received no later than December 3, 2014, at the hearing in Van Nuys, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Craig Shuman, Regional Manager of the Marine Region, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption.

Circumstances beyond the control of the Commission (e.g., timing of federal regulation adoption, timing of resource data collection, timelines do not allow, etc.)

or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the Final Statement of Reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission anticipates increased opportunities for the recreational groundfish fishery in 2015–2016 compared to 2014.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

The Commission does not anticipate any significant impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Participation in sport fisheries opportunities fosters conservation through education and appreciation of California’s wildlife.

The Commission does not anticipate any benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5; reference sections 200, 205, 206, 215, 220 and 316.5, Fish and Game Code; proposes to Amend Sections 1.45, 2.09, 4.05, 5.00, 5.80, Subsections 7.50(b)(8), (b)(23), (b)(29), (b)(35.5), (b)(45), (b)(50.8), (b)(63), (b)(82), (b)(97), (b)(99), (b)(104),

(b)(107), (b)(130), (b)(133), (b)(135), (b)(136), (b)(141), (b)(168), (b)(169), (b)(173), (b)(178), (b)(180), (b)(183), (b)(193), (b)(195.1), (b)(201), and (b)(203.5), Subsection 8.00(a), and Section 27.90, Title 14, California Code of Regulations (CCR), relating to Sport Fish Regulations for the 2015 season.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This Department proposal combines Department and public requests for Title 14, California Code of Regulations (CCR) changes for the 2014 Sport Fishing Review Cycle. This proposal will revise regulations on filleting of salmonids, extend low-flow restriction periods due to ongoing drought conditions, increase fishing opportunities for bass and other warm water species, minimize potential take of adult steelhead and native Paiute cutthroat trout, and make clarifications to other regulatory sections to reduce public confusion and improve regulatory enforcement.

The Department is proposing the following changes to current regulations

Filleting of Salmonids in Inland Waters

In 2013, the Department imposed a filleting requirement for all salmonids taken in inland waters. The regulation requires that all salmon and steelhead taken in inland waters where a sport fishing license is required, must be kept in such a condition that species and size can be determined until placed at the angler's permanent residence, a commercial preservation facility or being prepared for immediate consumption. The purpose of this regulation is to protect federally and state-listed salmonids by giving the Department the ability to determine the origin (wild or hatchery), the species (Coho, Chinook or steelhead), and the size (jack or adult) of salmon and steelhead taken, possessed and transported.

The fillet rule is enforced statewide in anadromous waters for all designated angling seasons. Along the California Coast, there are two salmon species (Coho and Chinook) that have overlapping run timings. Chinook salmon can be harvested but Coho salmon are protected and are illegal to harvest. Because of their run timing overlap, the enforcement of the fillet rule is necessary to minimize illegal harvest of Coho salmon.

In the Central Valley there are four runs of Chinook salmon: winter, spring, fall and late-fall, however Coho salmon are not present. Winter and spring-run Chinook salmon are illegal to harvest and are protected through seasonal angling closures on the Sacramento River and its tributaries. Because there is no overlap of protected Chinook runs during the open harvest season (July-December), the fillet rule is not critical for the enforcement of illegal harvest.

Prior to the fillet rule, a large portion of anglers in the Central Valley would fillet their salmon prior to departure from the river for ease of transport and disposal of carcasses. Since the establishment of the rule, many anglers have expressed their disappointment and have asked the Department to provide a compromise to the rule. Based on these reasons, the Department is proposing an exception in the Central Valley to the current fillet rule to allow anglers to fillet their Chinook salmon on site during the Chinook salmon angling season. The exception would allow the filleting of Chinook salmon from July through December on the Sacramento, American and Feather rivers.

In addition, the Department is adding the definition of a Commercial Preservation Facility to the regulation. The definition encompasses licensed fishing guides which will allow licensed guides to legally fillet salmon and steelhead for their clients.

Modify Dip Net Size Restriction for Landing Nets

Current regulatory language in Section 2.09, Possession of Illegal Gear, restricts the size of landing-type dip nets to 36 inches in greatest dimension. As worded, this regulation restricts the dip net opening and net bag length/depth to 36 inches. This restriction is a hindrance to freshwater anglers trying to land large species such as salmon, striped bass, and sturgeon. The intent of the 36-inch size restriction is to limit the harvest of bait fish. Therefore, the Department is proposing to amend the regulation to allow standard landing-type dip nets to be up to 36 inches in diameter across the net opening and up to 60 inches in net length/depth.

Add Dip Net Size Restriction for Bait Fish

To reduce public confusion and enforcement issues, the Department proposes to amend Section 4.05, Bait Fish Capture Methods, to clarify that dip nets, in addition to traps, may not be over 36 inches in greatest dimension.

Black Bass — Lake Castaic

The current regulation for black bass at Lake Castaic is outdated, and was enacted to protect a “trophy” black bass fishery. Lake Castaic has limiting factors that are not conducive to maintaining a large population of “trophy” black bass. Habitat for juvenile bass and sunfish is limited as shorelines are generally steep in both arms and contain a few small coves. Within these coves aquatic vegetation is lacking due to water level fluctuations. There is also a large healthy population of striped bass. The proposal is to amend the black bass regulation at Lake Castaic from 2 fish at 18 inches to 5 fish at 15 inches. This proposed amendment is the same or similar to other state waters; including but not limited to Lake Hodges, Diamond Valley, Lake Perris and Isabella Lake.

Black Bass — El Capitan Reservoir

The current regulation for black bass at El Capitan reservoir is outdated. There is a healthy population of black bass within the reservoir, and virtually no harvest for consumption. The Department proposes to amend the black bass regulation at El Capitan Reservoir from 5 fish at 15 inches to 5 fish at 12 inches; changing the lake to the statewide minimum for black bass.

White Sturgeon — Method of Take

Sections 5.80(d) and 27.90(d) are currently written using the word, “landing.” “Landing” is not defined in the Fish and Game Code. This creates confusion amongst anglers as to what the regulation means by “landing.” It also has the potential to create a legal challenge by defendants during the prosecution of an arrest. The proposal is to replace “landing” with “take” which is defined in Title 14, Section 1.80.

White Sturgeon — Angling Boundary

Section 5.80(i) is currently written in conflict with Section 5.80(i)(1)(A) through (C). This conflict creates confusion amongst anglers as to whether or not it is legal to fish for sturgeon on the eastern bank of the Sacramento River in Butte County. This also has the potential to create a legal challenge by defendants during the prosecution of an arrest.

Under the current regulation of Section 5.80(i)(1)(A) through (C) it is unlawful to take any sturgeon, use wire leaders, or use lamprey or shrimp as bait, between Keswick Dam and the Highway 162 Bridge. The Sacramento River flows through Shasta, Tehama, Glenn and Butte counties, between these two landmarks. Section 5.80(i) states the closure is from January 1 to December 31 in Shasta, Tehama and Glenn counties. Butte County has been unintentionally omitted from the regulation.

Big Sur River

Under current regulations, the harvest of hatchery trout and steelhead is allowed on the Big Sur River and tributaries above the upstream end of the gorge pool at the boundary of Pfeiffer Big Sur State Park with the Ventana Wilderness Area. However, this section of the Big Sur River is above a fish barrier and not reachable by anadromous salmonids. Therefore, the Department is proposing to remove the current regulatory language authorizing the harvest of hatchery trout and steelhead and return this section of the Big Sur River to catch and release angling. In addition, this proposal will remove the reference to Section 8.00, Low-Flow Restrictions, from Section (b)(23) as neither subsection of the Big Sur River, (b)(23)(A) or (b)(23)(b), is subject to low flow closures as defined in Section 8.00(c).

Calleguas Creek

The Southern California Steelhead DPS was listed as endangered under the Federal ESA in 1997. The DPS includes all naturally spawned anadromous *Oncorhynchus*

chus mykiss (steelhead) populations below natural and manmade impassable barriers in streams from the Santa Maria River, Santa Barbara County, California, (inclusive) to the U.S.–Mexico Border.

Despite the location of Calleguas Creek near the center of this endangered DPS, only a single dead adult steelhead trout was collected in Conejo Creek (Calleguas Creek tributary) in April of 2013. The stream is not currently monitored for the presence of steelhead. Very limited steelhead spawning habitat is available in Calleguas Creek and tributaries and all associated creeks are infested with non–native, exotic fish species.

Based on the discovery of the adult steelhead in Conejo Creek, the Department is proposing a seasonal closure for Calleguas Creek and tributaries to minimize the potential take of adult steelhead. Because the creek and its tributaries possess very limited steelhead spawning habitat, and the drainage supports a large non–native fish community, we propose a seasonal closure as opposed to a complete closure to protect adult steelhead, while maintaining opportunities for recreational angling.

The current regulations allow year–round angling on Calleguas Creek and tributaries. There is a 5–fish daily bag/possession limit for trout. The regulation change will be consistent with similar drainages within Region 5 with seasonal closures. These streams will be open to angling from the Saturday preceding Memorial Day through November 30th. Only artificial lures with barbless hooks may be used and the daily bag and possession limit will read: Open to fishing for non–salmonids only. Closed to the take of trout and steelhead.

Diaz Lake

Diaz Lake is located within the boundary of the Inyo County, Southwestern portion regulation. The Inyo County regulation specifically calls attention to the Cottonwood Creek restrictions as they are within its boundary and have different seasons and bag limits. However, it does not call attention to the Diaz Lake regulation even though it has a second season and bag limit that is different from the Inyo County, Southwestern portion regulation. The proposed regulation change will reference the Diaz Lake restrictions in the Inyo County regulations. Additionally, the Department often receives calls as to whether or not Independence Creek, which is part of the boundary, is included in the regulation. To clarify, the Department proposes adding a statement that Independence Creek is open to fishing.

Las Garzas Creek

Las Garzas Creek is misspelled as Las *Gazas* Creek in Title 14 and in the Sport Fishing Regulations Booklet. The proposal is to correct the spelling of the word Garzas.

Navarro River, Noyo River, and Ten Mile River

The proposed regulation change is to remove “and tributaries” from the Navarro River, Noyo River, and Ten Mile River fishing regulations. Fishing is currently only allowed in the main stems of the Navarro River, Noyo River, Ten Mile River, and North Fork Ten Mile River. The reference to “and tributaries” in the regulations leads to confusion and requests for clarification from the public. The recommended regulation change clearly identifies the main stems of the Navarro River, Noyo River, Ten Mile River, and North Fork Ten Mile River as the sections open to fishing.

Pit River

The proposed regulation change is for a section of the Pit River within Modoc County running from the Highway 395 bridge/South Fork Pit River crossing downstream to the Highway 299 (Canby) bridge/ Pit River crossing. This proposal would make this section of river open to fishing all year to increase angling opportunities for warm water fish. Currently this section of river is covered under the Sierra District General Regulations for trout, which is open the last Saturday in April through November 15.

Recent and historical surveys indicate that trout are not present within this section of river. Surveys conducted by United States Fish and Wildlife Service, duplicating historic sampling locations, did not find evidence of trout present (USFWS 2003), nor were trout present in the historic samples for the river reach proposed to be opened all year (USFWS 2003 and Vestra 2004). Moreover, many warm water species, such as catfish, green sunfish, blue gill, and possibly bass are present.

Silver King Creek

The Department is proposing to close Silver King Creek and tributaries below the confluence of Tamarack Lake Creek (below Llewellyn Falls) downstream to the confluence with Snodgrass Creek to fishing all year. The proposed regulation change is necessary to protect native Paiute cutthroat trout, which are listed as threatened pursuant to the federal Endangered Species Act, by prohibiting angling in a portion of its historic range below Llewellyn Falls down to Snodgrass Creek. This segment of the stream will be restocked with Paiute cutthroat trout as part of a restoration project. Existing regulations prohibit fishing all year in Silver King Creek and tributaries including lakes above Llewellyn Falls in existing Paiute cutthroat trout habitat.

Trinity River

In 2014, approximately 14 miles of the upper Trinity River were opened to winter angling and the new regulation was added to the Special Fishing Regulations. The same section of the upper Trinity River is also open

to angling from the last Saturday in April through November 15 under the North Coast District General Regulations. To avoid public confusion, the Department is proposing to add the April through Nov. 15 angling season to the upper Trinity River Special Fishing Regulations.

Low-Flow Restrictions References

Section 8.00, Low-Flow Restrictions, is referenced throughout the Special Fishing Regulations in Section 7.50. This proposal will add the Section 8.00 title and appropriate subsection to the existing references so the reader knows what Section 8.00 is and which subsection to refer to. In addition, this proposal will add the reference to Section 8.00 more frequently where the regulation applies. Adding this information will make it easier for anglers to understand and follow the regulations and makes the wording consistent with other references in Section 7.50.

Low-Flow Restriction Time Period

Section 8.00 provides fishing restrictions (closures) for specified rivers and streams during low flow conditions to protect Chinook salmon and steelhead populations.

On January 17, 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California and directed state officials to take all necessary actions to prepare for drought conditions with California facing water shortfalls in the driest year in recorded state history. In response to the Governor's proclamation, the Fish and Game Commission adopted on February 5, 2014 emergency sport fishing regulations extending the low flow restrictions on north coast and central coast streams to protect wild steelhead and Chinook salmon populations.

In anticipation of prolonged periods of low flow conditions throughout California in the future, the Department is proposing to permanently extend the annual low flow restrictions to April 30 for the north coast streams for continued protection of wild steelhead and Chinook salmon populations. In addition, this proposal will correct the phone number error in subsection 8.00(a).

Minor Editorial Corrections for Clarity

Additional minor corrections are proposed to correct typographical errors and to improve regulation clarity.

Benefits of the Regulations

The Commission anticipates benefits to the health and welfare of California residents. Trout and salmon are a nutritious food source and increasing inland sport fishery opportunities encourages consumption of this nutritious food. Sport fishing also contributes to increased mental health of its practitioners as fishing is a hobby and form of relaxation for many. Sport fishing

also provides opportunities for multi-generational family activities and promotes respect for California's environment by younger generations, the future stewards of California's natural resources.

It is the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the inland waters under the jurisdiction and influence of the state for the benefit of all its citizens and to promote the development of local California fisheries. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits in the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based inland trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence.

Consistency and Compatibility with Existing State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate recreational fishing in waters of the state (sections 200, 202, and 205, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to recreational fishing seasons, bag and possession limits.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Mount Shasta Hatchery Museum, 1 North Old Stage Road, Mount Shasta, California, on Wednesday, October 8, 2014, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be at the Airtel Plaza Hotel, 7277 Valjean Avenue, Van Nuys, California, on Wednesday, December 3, 2014, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 20, 2014 at the address given below, or by fax at (916) 653-5040, or by e-mail to

FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 26, 2014. All comments must be received no later than December 3, 2014 at the hearing in Van Nuys. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~underline format, as well as an Initial Statement of Reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Karen Mitchell, senior Environmental Scientist, Fisheries Branch, karen.mitchell@wildlife.ca.gov, (916) 445-0826, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made.

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The fishing areas that will be affected are limited, and the number of anglers that will be affected is relatively small. In addition, many of the proposed changes will offer increased fishing opportunities with potential increases in economic activity related to spending by sport fish anglers.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed regulations would provide additional sport fish angling opportunities in some areas. However, the increase in fishing activity is anticipated to be limited relative to recreational angling effort statewide. Therefore the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon and trout sport fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

GENERAL PUBLIC INTEREST

FISH AND GAME COMMISSION

**White Shark
(*Carcharodon carcharias*)**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), at its June 4, 2014 meeting in Fortuna, California, made a finding pursuant to Fish and Game Code section 2075.5, that the peti-

tioned action to add the Northeastern Pacific (NEP) white shark (*Carcharodon carcharias*) to the list of threatened or endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) is not warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).)

NOTICE IS ALSO GIVEN that, at its August 6, 2014 meeting in San Diego, California, the Commission adopted the following findings outlining the reasons for its rejection of the petition.

I. BACKGROUND AND PROCEDURAL HISTORY

Petition History

Oceana, the Center for Biological Diversity, and Shark Stewards (collectively, Petitioners) submitted a petition (Petition) to the Commission on August 20, 2012 to list the NEP population of white shark (*Carcharodon carcharias*) as a threatened or endangered species pursuant to CESA. (Cal. Reg. Notice Register 2012, No 37-Z, p. 1376) The Commission received the Petition on August 20, 2012. The Commission referred it for evaluation to the California Department of Fish and Wildlife (Department) on August 27, 2012 pursuant to Fish and Game Code section 2073.

The Department evaluated the Petition, using the information in that document and other relevant information available at that time, and found that the scientific information presented in the Petition was sufficient to indicate that the petitioned action may be warranted. On January 7, 2013, the Department submitted to the Commission its Evaluation of the Petition from Oceana, Center for Biological Diversity (CBD), and Shark Stewards to List Northeast Pacific White Shark (*Carcharodon carcharias*) as Threatened or Endangered (Petition Evaluation). The Department recommended that the Commission accept the Petition pursuant to Fish and Game Code section 2073.5.

On February 6, 2013, at its meeting in Sacramento, California, the Commission received public comment and determined that there was sufficient information in the Petition to indicate that the petitioned action may be warranted, accepted for consideration the Petition, and designated the white shark as a candidate species under CESA. (Cal. Reg. Notice Register 2013, No. 9-Z, p. 373.)

The Department promptly notified affected parties by issuing a press release, posting notice on the Department's website, and sending targeted letters to stakeholder groups including affected commercial fishing interests and scientific researchers holding scientific collecting permits for white shark. (Fish & G. Code, § 2074.4.)

Consistent with Fish and Game Code section 2074.6 and its implementing regulations, the Department commenced a twelve-month status review of the white shark following published notice of its designation as a candidate species under CESA. As an integral part of that effort, the Department solicited data, comments, and other information from interested members of the public and the scientific and academic communities. The Department and the Commission received 35,502 pieces of correspondence during the public notice period ending February 1, 2014. The majority of comments were from members of the public without stated affiliation. In January 2013, two shark experts opposed to the listing submitted peer reviewed publications and expert scientific comment. In May of 2013 the Petitioners submitted four peer reviewed scientific publications. On December 18, 2013, Oceana and CBD submitted supplemental information, in the form of a non-peer reviewed critical assessment of the analysis of the NEP white shark population size and risk of extinction prepared by the Biological Review Team (BRT) of the National Marine Fisheries Service (NMFS).

On January 6, 2014, the Department submitted a preliminary draft of its status review for independent scientific peer review by a number of individuals acknowledged to be experts on white shark, possessing the knowledge and expertise to critique the scientific validity of the report. (Fish & G. Code, § 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).) On April 3, 2014, the Department submitted its final Status Review of White Shark (*Carcharodon carcharias*) in California to the Commission (Status Review). Based on its Status Review and the best available science, the Department recommended to the Commission that designating white shark as a threatened or endangered species under CESA is not warranted (Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).). Following receipt, the Commission made the Department's Status Review available to the public, inviting further review and input. (Cal. Code Regs., tit. 14, § 670.1, subd. (g).)

On June 4, 2014, at its meeting in Fortuna, California, the Commission received public comment, accepted additional information from Petitioners and the public, and considered final action regarding the Petition to designate white shark as a threatened or endangered species under CESA. (Fish & G. Code, § 2075.5; Cal. Code Regs., tit. 14, § 670.1, subd. (i).) After receiving public comment, the Commission closed the administrative record of proceedings for the Petition. (Fish & G. Code, § 2075.5, subd. (a).) The Commission considered the petition, further information submitted by Petitioners, public comment, the Department's 2012 Petition Evaluation, the Department's 2014 Status Review, and other information included in the Commission's administrative record of proceedings. Following public

comment and deliberation, the Commission determined, based on the best available science, that designating white shark as a threatened or endangered species under CESA is not warranted. (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).) The Commission directed its staff, in coordination with the Department, to prepare findings of fact consistent with the Commission's determination and to present those findings for consideration and ratification at the Commission's August, 6, 2014 meeting in San Diego, California.

Species Description

The white shark is a large migratory apex predator that is globally distributed throughout the world's oceans, most commonly found in temperate waters between 54 and 68°F. While it is believed to be a mostly solitary animal, individuals congregate in specific areas off most continents. White sharks range in size from 3.9 to 5.9 feet total length (measured from the nose to the tip of the upper lobe of the tail [TL]) at birth to greater than 20 feet TL for females and 18 feet TL for males (e.g., Cailliet et al. 1985; Ebert 2003; Castro 2012). New aging techniques estimate that white sharks live longer than previously thought, possibly to 70 or more years.

White sharks are oophagous (developing embryos feed on eggs within the mother's uterus) and litters of 2 to 14 pups have been documented. Females are believed to give birth in or near the Southern California Bight (SCB) and northern Mexico in late spring and summer. Similar to other large apex predators, white sharks mature relatively late, have naturally low abundance, low fecundity, and relatively long life spans. Relatively few offspring are likely to reach maturity, as apex predator populations usually support fewer individuals than species lower on the food chain. This makes white shark populations potentially vulnerable to overexploitation.

Juvenile white sharks feed on fish and invertebrates (e.g., Klimley 1985). As they grow in size and become sub-adults they begin to forage on marine mammals. Little is known about the period of transition from juvenile to adult including the age at which these transitions occur, where they go during this time, and when they begin to make inshore/offshore migrations or utilize adult aggregation sites (e.g., Domeier 2012a). Some researchers (e.g., Klimley 1985; Domeier 2012) speculate that at approximately three years of age sub-adults begin to range farther from the nursery grounds into colder waters. In this stage they may range widely from Oregon (or farther north) to southern Mexico and the Gulf of California. These theories are supported by the limited information available on this life stage; however, validation through mark-recapture and other studies is needed to have more conclusive information on movement patterns for sub-adults.

The NEP population of white sharks found in California waters is a demographically-isolated population that shows significant genetic divergence from other global populations in Australia and South Africa (e.g., Jorgensen et al. 2010; Gubili et al. 2012). The known range of the NEP population of white shark extends from Mazatlan, Mexico and the Gulf of California north to the Bering Sea; and from the west coast of North America to the Hawaiian Islands. White sharks inhabit both inshore and offshore areas, from the continental shelf to the Shared Offshore Focal Area (SOFA) between California and Hawaii. The SOFA is a vast area of deep open water habitat that is shared by white sharks from both central California and Guadalupe Island during the offshore phase of their migration.

Federal Status

In June 2012, WildEarth Guardians submitted a petition to NMFS requesting that the NEP population of white shark be listed as endangered or threatened under the federal Endangered Species Act (ESA). In August 2012, Petitioners submitted a similar petition to NMFS. In September 2012, NMFS published a 90-day finding (77 Fed. Reg. 59582 (2012)) announcing that both petitions presented substantial scientific information indicating that the NEP population of white shark may warrant listing under ESA and that NMFS would conduct an ESA status review. To aid in this review, NMFS formed a Biological Review Team (BRT), consisting of scientists from the Southwest Fisheries Science Center. The BRT prepared its Status Review of the Northeastern Pacific Population of White Sharks (*Carcharodon carcharias*) under the Endangered Species Act. On June 28, 2013, based on the BRT’s peer-reviewed analysis, NMFS issued its 12-Month Finding on Petitions to List the Northeastern Pacific Ocean Distinct Population Segment of White Shark as Threatened or Endangered Under the Endangered Species Act, in which NMFS found that the NEP population of white shark was a distinct population segment but was not in danger of extinction under ESA criteria nor was it likely to become so within the foreseeable future. (78 Fed. Reg. 40104 (2013).)

Although not a listed or candidate species under ESA, white shark is protected under several federal laws, regulations, and management efforts.

- Federal law prohibits trade in all white shark products, as the U.S. recognizes the Convention on International Trade and Endangered Species (CITES) treaty. This is supported by the Lacey Act, which makes it unlawful to import, export, sell, acquire or purchase any fish, animal or plant protected by state or international law, including CITES.

- Take of white shark is prohibited under the West Coast Highly Migratory Species Fishery Management Plan (HMS FMP). The scope of this prohibition covers all United States vessels that fish for HMS species using authorized gear within the United States Exclusive Economic Zone (EEZ; 370 kilometer, 200 nautical miles) as well as the west coast state territorial waters of California, Oregon, and Washington. Additionally this applies to those vessels fishing the high seas and landing in the States of California, Oregon, and Washington. The large mesh drift gill net fishery targeting swordfish and thresher shark is a federally managed fishery under the HMS FMP. Originally managed by the State of California, this fishery came under federal jurisdiction with the adoption of the HMS FMP, and California’s protective measures for white shark were incorporated into the federal regulations.
- The Gulf of the Farallones National Marine Sanctuary (GFNMS) and the Monterey Bay National Marine Sanctuary (MBNMS), have prohibitions on attracting white sharks. Additionally, the GFNMS also prohibits vessels from approaching within 50 meters (164 feet) of white sharks within 3.7 kilometers (2 nautical miles) of the islands. These prohibitions were put in place to manage adventure tourism, filming, and research activities associated with white sharks that have potential to cause disturbance to natural behavior. The GFNMS issues permits to allow some activities related to education and research that allow exceptions to prohibitions on a case-by-case basis.
- The Shark Finning Prohibition Act of 2000 amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and prohibits shark finning within the jurisdiction of the United States. This Act also prohibits the custody, control, or possession of shark fins aboard a fishing vessel without the carcass or landing of shark fins without the carcass.
- The Shark Fin Conservation Act of 2010 strengthens the prohibitions on shark finning under the MSA and under the High Seas Driftnet Fishing Moratorium Protection Act (HSDFMFA). The prohibitions on shark finning under MSA and the HSDFMFA provide some additional protections for white shark.

II. STATUTORY AND LEGAL FRAMEWORK

These proposed findings are prepared as part of the Commission’s final action under CESA regarding the

Petition to designate white shark as a threatened or endangered species under CESA. As set forth above, the Commission’s determination that listing white shark is not warranted marks the end of formal administrative proceedings under CESA. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.)

The CESA listing process for white shark began in the present case with Petitioners’ submittal of their Petition to the Commission in August 2012 (Cal. Reg. Notice Register 2012, No. 37–Z, p. 1376.). The regulatory process that ensued is described above in some detail, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114–116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541–1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111–1116.

The “is not warranted” determination at issue here for white shark stems from Commission obligations established by Fish and Game Code section 2075.5(e). Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process: whether the petitioned action is warranted or is not warranted. Here with respect to white shark, the Commission made the finding under Section 2075.5(e) that the petitioned action is not warranted.

The Commission was guided in making this determination by various statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease (Fish & G. Code, § 2062.). Similarly, the Fish and Game Code defines a threatened species under CESA as a native species or subspecies of a bird,

mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter. (*Id.*, § 2067.)

As established by published appellate case law in California, the term “range” for purposes of CESA means the range of the species within California (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App.4th at p. 1540, 1549–1551.).

The Commission was also guided in making its determination regarding white shark by Title 14, section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the continued existence of the species is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification, or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Fish and Game Code section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA (Fish & G. Code, § 2055.). This policy direction does not compel a particular determination by the Commission in the CESA listing context. Yet, the Commission made its determination regarding white shark mindful of this policy direction, acknowledging that “[l]aws providing for the conservation of natural resources’ such as the CESA ‘are of great remedial and public importance and thus should be construed liberally’” (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App.4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.).

Finally in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party (See, e.g., *Id.*, §§ 2071, 2074.4, 2078;

Cal. Code Regs., tit. 14, § 670.1, subd. (h).). The related notice obligations and public hearing opportunities before the Commission are also considerable (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.). All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, §670.1, subds. (d), (f), (h).).

III. FACTUAL AND SCIENTIFIC BASIS FOR THE COMMISSION’S FINDINGS

The factual and scientific bases for the Commission’s finding that designating white shark as a threatened or endangered species under CESA is not warranted are set forth in detail in the Commission’s administrative record of proceedings. The evidence in the administrative record in support of the Commission’s determination includes, but is not limited to, the Department’s 2013 Petition Evaluation and 2014 Status Review, and other information specifically presented to the Commission and otherwise included in the Commission’s administrative record as it exists up to and including the Commission meeting in Fortuna, California on June 4, 2014. The administrative record also includes these findings.

The Commission finds the substantial evidence highlighted in the preceding paragraph, along with other evidence in the administrative record, supports the Commission’s determination that the continued existence of white shark in the State of California is not in serious danger of becoming extinct or threatened by a combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also finds that the same evidence constitutes sufficient scientific information to establish that designating white shark as a threatened or endangered species under CESA is not warranted. The Commission finds in this respect that white shark is not in serious danger of becoming extinct throughout all, or a significant portion, of its range in California. Similarly, the Commission finds that white shark is not presently threatened and it is unlikely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by CESA.

The following Commission findings highlight in more detail some of the scientific and factual information and other evidence in the administrative record of proceedings that support the Commission’s determination that designating white shark as a threatened or endangered species under CESA is not warranted:

1. The first attempt to estimate the NEP white shark population consisted of the independent Photo-ID studies in Central CA and Mexico. The Petitioners combined these results into a non-peer reviewed estimate of 339 adults and sub-adults in the NEP. Although a population of apex predators is expected to be relatively small, the Department concluded that this estimate likely underestimates the population. The Department found the limited geographic range of these studies and the short time span of the central California study problematic in particular, in addition to other factors. This conclusion is supported by several scientific publications, including a peer reviewed assessment of the population conducted by National Marine Fisheries Service scientists that estimates 3,000 total individuals of all life stages (e.g., Domeier 2012b; Dewar et al. 2013). This estimate utilized augmented datasets from both photo-ID studies and accounted for biases found in the original studies.
2. Historically, the largest threat to white sharks — primarily young-of-the-year (YOY) and juveniles — in the NEP has been incidental take in set gill net fisheries. Commercial fishing records indicate a peak in white shark interactions in the mid-1980s. Since this peak, protections for white shark have progressively increased, and commercial gill net effort off California has dropped to a fraction of its historic size and the geographic area open to fishing has been dramatically reduced by state and federal regulations (Cal. Fish & G. Code, §§ 5517, 8575,

- 8575.5, 8599, 8610.3, 8664.8; Cal. Code Regs., tit. 14, §§ 28.06, 104.1).
3. Interactions with commercial set gill net gear in California have started to increase over the past ten years even as fishing effort has continued to decline. Current research suggests this trend could signal an increase in the population of young white sharks in the SCB (e.g., Lowe et al. 2012; Lyons et al. 2013).
 4. Prior to 2010 there were essentially no observed white shark attacks on California sea lions by marine mammal researchers in the northern Channel Islands. In 2011, approximately 136 bite marks were recorded and over 300 were recorded in 2012 (e.g., Dewar et al. 2013). Similarly, over the past five years, researchers have documented a dramatic increase in the number of California southern sea otter mortalities linked to white shark bites in Monterey Bay, north of Santa Cruz, and in San Luis Obispo County (e.g., M. Harris, CDFW–OSPR pers. comm.). While it is not definitive that these increases are due to an increase in the NEP white shark population, there have not been notable decreases in attacks in other locations (e.g., Dewar et al. 2013). Therefore, it is reasonable to infer there may be more sharks foraging on marine mammals and sharks moving to different forage areas.
 5. Recent research in the SCB has found that young white sharks can carry a significantly high level of persistent toxins such as PCBs, DDT, and mercury in their tissues (e.g., Mull et al. 2012; Mull et al. 2013). Despite these high levels of contaminants, young white sharks do not seem to show any deleterious effects and there is no evidence that these toxic loads affect their ability to survive.
 6. Recent models of climate change suggest a potential increase in the availability of suitable habitat for adult white shark (e.g., Hazen et al. 2012). An increase in water temperature could expand the white sharks’ range into areas that are currently too cold for the species to utilize, but this remains speculative and limited across the population’s life stages.
 7. In addition to large size, even at birth, utilization of shallow nearshore habitat during the first three years of life likely provides some level of protection for YOY and juveniles from large predators (e.g., Pyle et al. 1999), and it is unlikely that predation is a significant threat to the population.

8. White sharks are larger, in all life stages, than most of the predators with which they share habitat, reducing the risk from competition with other species. In addition, their ability to feed on a range of prey make it unlikely the population would be susceptible to catastrophic decline from the absence of a specific prey species (e.g., Klimley 1985; Carlisle et al. 2012; Domeier 2012a; Dewar et al. 2013; Kim et al. 2012).

IV. ADDITIONAL CONSIDERATIONS INFORMING THE COMMISSION’S FINAL DETERMINATION

The Commission’s determination that designating white shark as a threatened or endangered species under CESA is not warranted; it is informed by various additional considerations. In general, the Fish and Game Code contemplates a roughly twelve-month long CESA listing process before the Commission, including multiple opportunities for public and Department review and input and peer review (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.). From the initial receipt of the Petition in August 2012 through the Commission’s decision on June 4, 2014 that listing is not warranted, the Department and the Commission received numerous comments and other significant public input, regarding the status of white shark from a biological and scientific standpoint and with respect to the petitioned action under CESA. The Commission, as highlighted below, was informed by and considered all of these issues, among others, in making its final determination that designating white shark as a threatened or endangered species under CESA is not warranted (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).).

V. SCIENTIFIC DETERMINATIONS REGARDING THE STATUS OF THE NORTHEASTERN POPULATION OF WHITE SHARK

CESA defines an endangered species as one “which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease” (Fish & G. Code, § 2062.). CESA defines a threatened species as one “that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protec-

tion and management efforts required by [CESA]” (Id., § 2067).

Pursuant to CESA’s implementing regulations, a “species shall be listed as endangered or threatened . . . if the Commission determines that its continued existence is in serious danger or is threatened by anyone or any combination of the following factors: (1) present or threatened modification or destruction of its habitat; (2) overexploitation; (3) predation; (4) competition; (5) disease; or (6) other natural occurrences or human–related activities” (Cal. Code Regs. tit. 14, § 670.1, subd. (i)(1)(A)).

Present or threatened Modification or Destruction of Habitat

- White sharks, like other apex predators, can accumulate contaminants over their lifespan. However, high tissue levels of elemental and organic contaminants have not been found to cause deleterious effects in NEP white sharks. Environmental monitoring data have shown that contaminant inputs have greatly been reduced off California through federal, state, and local regulatory efforts, reducing risks from habitat degradation (e.g., Mull et al. 2012; Mull et al. 2013).
- Similar to other large marine species, white sharks may be susceptible to ingestion and entanglement by marine debris, but risks to the population appear to be low. There have been no documented entanglements involving white sharks in the NEP (e.g., Taylor 2010). Additionally, white sharks have the capability of evacuating their stomachs, which may reduce ingestion risks (e.g., Kerstetter et al. 2004; Brunnschweiler et al. 2011).
- Recent models of climate change suggest a potential increase in the availability of suitable habitat for adult white shark, but this remains speculative and limited across the population’s life stages (e.g., Hazen et al. 2012). White sharks are highly migratory and range across large expanses of the NEP, and there is evidence indicating that white sharks are able to deal with wide variations in temperature and dissolved oxygen concentration (e.g., Boustany et al. 2002; Nasby–Lucas et al. 2009; Siebel 2011; Nasby–Lucas et al. 2012). At this time there is not sufficient scientific information to assess the specific potential or actual impacts of ocean warming, acidification or de–oxygenation on the population of white sharks inhabiting the NEP.

- Based on the best scientific information available, the Commission finds that the continued existence of the NEP population of white shark is not in serious danger or threatened by present or threatened modification or destruction of habitat.

Overexploitation

- White sharks in the NEP are widely protected on the west coast through state, federal, and international efforts directly through take prohibitions for this species, as well as through regulation of fisheries and sharks generally that provide protections indirectly (Cal. Fish & G. Code, §§ 5517, 8575, 8575.5, 8599, 8610.3, 8664.8; Cal. Code Regs., tit. 14, §§ 28.06, 104.1).
- White sharks have been a protected species under California law since 1994 (Cal. Fish & G. Code, §§ 5517, 8599).
- Interactions are also known to occur in Mexican commercial gill net fisheries. However, prohibitions on take of white shark have become progressively stringent, reducing risk, although limited resources for monitoring and enforcement exist (e.g., DOF 2002, 2007, 2014; Barreira 2007).
- Nearshore set gill net fisheries account for over 80 percent of documented interactions with white shark off California (e.g., Lowe et al. 2012). Catch records of incidental white shark take by gill net gear off California declined steadily from 1990 until 2005, indicating gill net area closures implemented during the 1990s were effective in reducing incidental take of juvenile white shark in the nearshore waters of the SCB (e.g., Lowe et al. 2012; CDFW 2014).
- The recent increase in interactions with gill net gear is likely due to an increase in the population of YOY and juvenile white sharks in the SCB (e.g., Lowe et al. 2012; Lyons et al. 2013).
- Based on the best scientific information available, the Commission finds that the continued existence of the NEP population of white shark is not in serious danger or threatened by overexploitation.

Predation

- White sharks are apex predators and generally considered to be at the top of the food chain during most life history stages. However, available interaction data show some white shark predation by orcas and larger sharks (e.g., Pyle et al. 1999). In addition to large size, even at birth, utilization of shallow nearshore habitat during the first three years of life likely provides some level of

protection for YOY and juveniles from large predators.

- Based on the best scientific information available, the Commission finds that the continued existence of the NEP population of white shark is not in serious danger or threatened by predation.

Competition

- Competition for prey (mainly fish for juveniles and pinnipeds for adults) between white sharks and other species in their habitat is not well understood. There may be competition from other large predator species (e.g., Dewar et al. 2013), but there is no indication this poses a significant population risk. White sharks are generalist feeders and are considered resilient to changes in prey abundance and distribution. Populations of their prey species are healthy and likely to support predator populations.
- Based on the best scientific information available, the Commission finds that the continued existence of the NEP population of white shark is not in serious danger or threatened by competition.

Disease

- All species of sharks may develop disease; and tumors have recently been documented in single white shark in Australia (e.g., Robbins et al. 2013). However, like other shark species, white sharks have a generalized immune system and other adaptations that make disease rare (e.g., Compagno 2001; Ebert 2003).
- Based on the best scientific information available, the Commission finds that the continued existence of the NEP population of white shark is not in serious danger or threatened by disease.

Other Natural Occurrences or Human-Related Activities

- Strikes by commercial shipping vessels are a potential risk for white sharks. The frequency and severity of ship strikes are not well known, even for marine mammals, due to failures to report collisions, delayed death post impact, inability to locate carcasses after an impact, and the difficulty of determining the actual cause of death. There is little documentation on the frequency and effects of ship strikes on white sharks. However, the risk of ship strikes to white sharks in the NEP may be reduced by the recent relocation of shipping lanes adjacent to the Gulf of the Farallones, Channel Islands, and Cordell Banks National Marine Sanctuaries adopted by the International Maritime Organization (e.g., Drake 2013; NOAA 2012).

While the full risk of ship strikes is still unknown they do not appear to pose a significant risk to the population at this time.

- Based on the best scientific information available, the Commission finds that the continued existence of the NEP population of white shark is not in serious danger or threatened by other natural occurrences or human-related activities.

Summary of Key Findings

Based on the criteria described above, the best scientific information available to the Commission indicates that white shark is not currently in serious danger of becoming extinct in California within the next few decades, nor in the foreseeable future in the absence of special protection and management under CESA.

The current size of the NEP population is uncertain. While there are no historic estimates for comparison, independent trends in incidental catch in fisheries and increases in attacks on marine mammals suggest a stable or increasing population which is supported by genetic analysis indicating a robust population.

Incidental take of juvenile white sharks in set gill net fisheries is a potential risk factor for this population. However, this risk has been reduced considerably as these fisheries have become more restricted through regulation and declining effort. Based on trends in commercial fisheries and existing regulations, the Department does not consider future impacts of commercial gill net fishing to be an immediate threat to the continued existence of the NEP population of white sharks in California.

The Department, evaluated other factors, such as contaminants and non-point source pollution, predation, disease, competition, climate change, and availability of prey. Based on the Department's analysis, none of these factors is considered to be a serious threat to the continued existence of the NEP white shark population.

Based on the best scientific information available, the Department concludes the continued existence of the NEP population of white shark is not in serious danger or threatened. Minimizing impacts to individuals could be achieved by managing interactions with commercial and recreational fisheries. Currently California gill net fisheries are heavily regulated and do not appear to be increasing in effort now, nor does it appear likely they will in the near future. Interactions should continue to be monitored but are likely not a threat to the increasing population. Further, the Department generated the following recommendations to prioritize conservation, research, regulation and monitoring activities.

- Increase coordination with other fisheries agencies to establish continuity in management goals, enforcement, and conformance in regulations. Encourage studies designed to reduce lethal interactions with fishing operations, especially with nearshore gill net fisheries that are more likely to have interactions with YOY and juvenile white sharks. Research should include exploration of gear and method modifications (soak time, etc.) that reduce lethal interactions.
- Increase observer coverage on commercial fishing vessels, especially those participating in the nearshore gill net fisheries.
- Implement regulation of recreational tourism (cage diving, viewing, etc.).
- Implement a public outreach and education program, especially in the shore based sector of the recreational fishery. The program should inform constituents about the presence of YOY and juvenile white sharks in the SCB, and how they can help protect this species through appropriate fishing practices and by avoiding interaction with the species.
- Increase monitoring and enforcement of recreational tourism in areas where interactions with white sharks are high.
- Support research specifically focused on juvenile and sub-adult white shark movements through the SCB, Mexico, and other areas within the species' range.
- Encourage the expansion of efforts to determine current population and abundance trends. Efforts should include:
 - The continuation of photo-ID studies in Guadalupe Island and central California, including a comparison of the two databases, consideration of alternate methods of identification (e.g., Computer identification via DARWIN; Towner et al. 2013), and expansion of spatial and temporal scope to additional pinniped rookeries and seasons.
 - The expansion of genetic research to include comparison of samples from both aggregation sites and throughout range, and identification of parentage.
 - Support continued life history research of all life stages of white shark, including migration, habitat use and range, feeding ecology, and reproduction.
 - Expand the range and scope of tagging studies to include:
 - ◆ Areas outside of the two main aggregation sites,
 - ◆ Increased focus on mature females,
 - ◆ Increased acoustic tagging of YOY and juvenile white sharks in SCB and Mexican nursery areas,
 - ◆ Increased deployment of acoustic sensors from Mexico to Washington.
- Continue current efforts to determine the effects of persistent environmental pollutants, and environmental changes related to climate change, such as ocean acidification, on large shark species and their preferred prey species.
- Encourage research and awareness of less common factors, such as predation and disease, across all life stages.
- Encourage the Pacific Fishery Management Council to recommend that U.S. delegates to international regulatory bodies and regional fisheries management organizations support measures to make white sharks a prohibited species. Specifically, the U.S. delegates to entities including the Inter-American Tropical Tuna Commission and the Western Central Pacific Fisheries Commission.

VI. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated all information and inferences for and against designating white shark as a threatened or endangered species under CESA. This information includes scientific and other general evidence in the Petition, the Department's 2012 Petition Evaluation, the Department's 2014 peer-reviewed Status Review, and the Department's related recommendations based on the best available science, written and oral comments received from the public and the scientific community, and other evidence included in the Commission's administrative record of proceedings. Based on the evidence in the administrative record, the Commission has determined that the best scientific information available indicates that the continued existence of white shark in California is not in serious danger or threatened in the foreseeable future by present or threatened modifications or destruction of white shark habitat, overexploitation, predation, competition, disease, or other natural occurrences or human-related activities (See generally Fish & G. Code, §§ 2062, 2067; Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A)). The Commission finds, for the same reason, that there is not sufficient scientific information at this time to indicate that the petitioned action is warranted (Fish & G. Code, §§ 2070, 2075.5.). The Commission finds that designating white shark as a threatened or endangered species under CESA is not warranted and that,

with adoption of these findings, for purposes of its legal status under CESA shall revert to its status prior to the filing of the Petition (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd., (i)(2).)

Sonke Mastrup
Executive Director
Fish and Game Commission
Dated: August 6, 2014

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Personal Communications

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DEPARTMENT OF FISH AND WILDLIFE

PROPOSED RESEARCH ON FULLY PROTECTED SPECIES

Research on American Peregrine Falcon in California

The Department of Fish and Wildlife (“Department”) received a proposal on November 26, 2012, from Dr. Joel E. Pagel, with the U.S. Fish and Wildlife Service (USFWS), requesting authorization to take the American peregrine falcon (*Falco peregrinus anatum*) (‘falcon’), a Fully Protected bird, for scientific research purposes, consistent with conservation and recovery of the species, as well as assisting with recovery of the California least tern (*Sternula antillarum browni*) (least tern), a Fully Protected bird and State and Federally Endangered subspecies, and western snowy plover (*Charadrius alexandrinus nivosus*) (plover), a Federally Threatened species and California Bird Species of Special Concern.

Dr. Pagel is planning to conduct studies of the falcon throughout its geographic range in California, in accordance with standardized methods approved by the Department. The ongoing research activities include capture, relocation, nest entry, banding, color-banding, blood and feather sampling, collection of addled eggs and egg fragments, and collection of prey remains. The

proposed new research is for tracking falcons using telemetry technology, for the purpose of determining movement patterns between wintering, breeding, and foraging areas, and for tracking movements of any falcons relocated to protect terns or plovers. Dr. Pagel, and any others deemed qualified by the Department for this purpose, would attach biotelemetry devices on falcons. The marking method is commonly used for tracking raptor movements, and no adverse effects on individual falcons or falcon populations are expected. Understanding habitat use, home range, and movement capabilities of the falcon is essential to its conservation and recovery.

The Department intends to amend, under specified conditions, a Memorandum of Understanding (MOU) to authorize qualified professional wildlife researchers, with Dr. Pagel as the Principal Investigator, to carry out the proposed activities. The applicant is also required to possess valid federal permits for the falcon, and a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected birds after 30 days' notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after September 22, 2014, for an initial term of three years. The term may be extended with Department authorization. Contact: Carie Battistone, Wildlife Branch, Carie.Battistone@wildlife.ca.gov, 916-445-3615.

**DEPARTMENT OF FISH
AND WILDLIFE**

**PROPOSED RESEARCH ON FULLY
PROTECTED SPECIES**

Research on American Peregrine Falcon in California

The Department of Fish and Wildlife ('Department') received a proposal on November 5, 2013, from Paul Young, on behalf of Ventana Wildlife Society, Salinas, California, requesting authorization to take the American peregrine falcon (*Falco peregrinus anatum*) ('falcon'), a Fully Protected bird, for the purpose of assisting with recovery of the California least tern (*Sternula antillarum browni*) ('tern') and western snowy plover (*Charadrius alexandrinus nivosus*) ('plover'). The tern is a Fully Protected bird, and is also listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act,

and the plover is listed as Threatened under the federal Endangered Species Act.

Mr. Young is planning to conduct studies of the falcon at Oceano Dunes State Vehicular Recreation Area in San Luis Obispo County, in accordance with standardized methods approved by the Department. The proposed research activities include capture, handling, banding, and relocation of falcons. Relocation of falcons will contribute to recovery of the plover and tern, helping to identify, assess, and alleviate threats from predators, and no adverse effects on individual falcons or falcon populations are expected.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) to authorize qualified professional wildlife researchers, with Paul Young as the Principal Investigator, to carry out the proposed activities. The applicant is also required to possess valid federal permits for the falcon, and a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected birds after 30 days' notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after September 22, 2014, for an initial term of three years. The term may be extended with Department authorization. Contact: Carie Battistone, Wildlife Branch, Carie.Battistone@wildlife.ca.gov, 916-445-3615.

**DEPARTMENT OF FISH
AND WILDLIFE**

**CESA CONSISTENCY DETERMINATION
REQUEST FOR**

Calico Mineral Exploration Project
(2080-2014-010-06)
San Bernardino County

The Department of Fish and Wildlife (CDFW) received a notice on August 8, 2014, that Calico Exploration LLC proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project will investigate the subsurface geology and mineralogy, and the mineral value of the mineralized zone(s) known to exist in the region. The proposed project would drill one or more core holes at 10 sites to obtain geologic and mineralogical data from potential ore bodies at two different locations (i.e., Mitchell/Lead Mountain Area and

Lilly Claims Area), as well as perform an induced polarization (IP) geophysical survey. The proposed project will occur 12 miles northeast of the City of Barstow, San Bernardino County, California.

The U.S. Fish and Wildlife Service (Service) issued a “no jeopardy” federal biological opinion (Service File No. 1–8–94–F–28R)(BO) and incidental take statement (ITS) to the Bureau of Land Management on June 9, 1994, which considered the effects of the proposed project on the state threatened and federally threatened desert tortoise (*Gopherus agassizii*).

Pursuant to California Fish and Game Code section 2080.1, Calico Exploration LLC is requesting a determination that the BO and associated ITS are consistent with CESA for purposes of the proposed project. If CDFW determines the BO and associated ITS are consistent with CESA for the proposed project, Calico Exploration LLC will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

**DEPARTMENT OF FISH
AND WILDLIFE**

**PROPOSED RECOVERY ACTIONS FOR A
FULLY PROTECTED SPECIES
Recovery Actions for San Francisco Gartersnake
(*Thamnophis sirtalis tetrataenia*) at the
Midpeninsula Regional Open Space District’s
Russian Ridge Open Space Preserve**

The Department of Fish and Wildlife (Department) received a proposal on August 8, 2014, from Julie K. Andersen, on behalf of Kirk Lenington, the Natural Resources Department Manager at the Midpeninsula Regional Open Space District (MROSD), Los Altos, California, requesting authorization to take the San Francisco Gartersnake (*Thamnophis sirtalis tetrataenia*) (‘SFGS’), for scientific research and recovery purposes associated with habitat creation, restoration, enhancement, and maintenance activities at La Honda Creek Open Space Preserve and Mindego Ranch, consistent with protection and recovery of the species. The SFGS is a Fully Protected reptile, and is also listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Ms. Anderson is planning to conduct habitat enhancement work and studies of the SFGS at the MROSD–owned lands indicated above, in accordance with non–invasive methods approved by the Department and the U.S. Fish and Wildlife Service (Service). The goal of the “La Honda Creek Master Plan” and

“The Mindego Ranch Use and Management Plan” is to ensure the long–term viability of the Mindego Ranch SFGS population, and to create, enhance, restore and maintain habitat at La Honda Open Space Preserve to support SFGS if they naturally colonize the site or if they are eventually translocated there as part of a future recovery effort. The initial phases of each plan are expected to be completed within approximately five years, with future phases and ongoing maintenance, research, monitoring, and adaptive management continuing at least 30 years. The following objectives have been identified as being essential elements to achieve the stated recovery goal:

- (1) Create, enhance, and maintain aquatic habitat that increases amphibian prey availability for the SFGS; specifically California red–legged frog (CRLF), by creating ponds, recontouring existing stock ponds, removing excess sediment and vegetation from ponds, repairing failing earthen berms, and removing non–native predators and competitors (e.g., bullfrogs and bass);
- (2) Enhance, restore and maintain functional upland habitat for SFGS through prescribed fire and grazing, and remove dilapidated structures that potentially contain hazardous wastes;
- (3) Monitor SFGS to determine abundance trends and distribution as part of an adaptive management strategy for the properties, which may include capture of wild SFGS by hand or hand–held snake stick, taking of body measurements, and release at the site of capture;
- (4) Install or repair infrastructure (e.g., culverts, roads, and trails) necessary to carry out the above activities; and
- (5) If any SFGS carcasses are found, they will be salvaged and donated to a public scientific institution open to the public, as designated by the Department and the Service.

More detailed descriptions of the habitat restoration and monitoring activities are available at http://www.openspace.org/plans_projects/open_space_planning.asp.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) to authorize qualified professional wildlife researchers, with Kirk Lenington as the Principal Investigator, to carry out the proposed research and recovery activities. The applicant is also required to have a valid federal recovery permit for the SFGS, and a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 5050(a)(1), the Department may authorize take of Fully Protected reptiles after 30 days’ notice has been

provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research and recovery activities are consistent with the requirements of FGC Section 5050 for take of Fully Protected reptiles, it will issue the MOU on or after September 22, 2014, expiring on July 14, 2018, consistent with the federal recovery permit. The MOU may be subsequently renewed. Contact: Laura Patterson, Wildlife Branch, Laura.Patterson@wildlife.ca.gov, 916-341-6981.

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

AIR TOXICS HOT SPOTS PROGRAM

**NOTICE OF EXTENSION TO THE PUBLIC
COMMENT PERIOD ON DRAFT REFERENCE
EXPOSURE LEVELS FOR TOLUENE
DIISOCYANATE AND METHYLENE
DIPHENYL DIISOCYANATE**

AUGUST 22, 2014

The Office of Environmental Health Hazard Assessment (OEHHA) released two draft documents, *Toluene Diisocyanate Reference Exposure Levels* and *Methylene Diphenyl Diisocyanate Reference Exposure Levels*, for public review on July 4, 2014, for a 60-day public review period. We received a request from the American Chemistry Council Diisocyanates Panel to extend the public comment period. **This notice extends the comment period to September 16, 2014.**

OEHHA is required to develop guidelines for conducting health risk assessments under the Air Toxics Hot Spots Program (Health and Safety Code Section 44360(b)(2)). In response to this statutory requirement, OEHHA develops RELs for many air pollutants. The toluene diisocyanate and methylene diphenyl diisocyanate Reference Exposure Levels were developed using the most recent "Air Toxics Hot Spots Program Technical Support Document for the Derivation of Noncancer Reference Exposure Levels," finalized by OEHHA in 2008.

The draft documents are available on the OEHHA's website.

After the close of the public comment period, the documents will be revised as appropriate by OEHHA, and peer reviewed by the State's Scientific Review Panel on Toxic Air Contaminants in late 2014.

Please direct your comments on the documents, in writing or by e-mail, and any inquiries concerning technical matters or availability of the documents to:

Dr. David Siegel
Chief, Air Community and Environmental Research
Branch
Office of Environmental Health Hazard Assessment
1001 I St
Sacramento, CA, 95814
E-mail: David.Siegel@oehha.ca.gov
Telephone: (916) 322-5624

Information about dates and agenda for meetings of the Scientific Review Panel can be obtained from the California Air Resources Board web page at <http://www.arb.ca.gov/srp/srp.htm>.

**OAL REGULATORY
DETERMINATIONS**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION
(Summary Disposition)**

**(Pursuant to Government Code Section 11340.5
and
Title 1, section 270, of the
California Code of Regulations)**

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

**REQUESTED BY: ROBERT K. WALTERS
CONCERNING: Memorandum titled
"Enhanced Program Facility
Increased Personal Property"
dated December 31, 2013,
issued by the Department of
Corrections and
Rehabilitation.**

**DETERMINATION ISSUED
PURSUANT TO
GOVERNMENT CODE
SECTION 113403.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250.¹ OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

CHALLENGED RULE

The rule challenged as an underground regulation is found in a memorandum titled “Enhanced Program Facility Increased Personal Property,” dated December 31, 2013 (Memorandum). The Memorandum is addressed to a number of wardens at various state correctional institutions. The Memorandum indicates that certain institutions were selected to participate in an EPF (Enhanced Program Facility) program. Inmates that participate in the EPF would be authorized to possess certain additional personal property items as listed in the Memorandum effective January 1, 2014.

The Memorandum was signed by M. D. Stainer, Director, Division of Adult Institutions, Department of Corrections and Rehabilitation (Department). A copy of the Memorandum is attached to this determination as Exhibit A.

DETERMINATION

OAL determines that the challenged rule, the Memorandum titled “Enhanced Program Facility Increased Personal Property” dated December 31, 2013, meets the definition of “regulation” that should have been adopted pursuant to the APA.

¹ As defined by title 1, section 250(a), an “Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

FACTUAL BACKGROUND

On January 27, 2014, Robert Walters (Petitioner) submitted a petition to OAL challenging the Memorandum as an underground regulation.

OAL accepted the petition for consideration on March 26, 2014. The petition was published in the Notice Register on April 11, 2014. Comments from the public were solicited until May 12, 2014. No comments were received. The Department declined to submit a response to the petition which would have been due by May 27, 2014.

The Department has adopted regulations governing what personal property inmates may possess. When an inmate enters an institution, he is allowed only certain personal property as delineated in title 15 of the California Code of Regulations. There are different lists of allowable personal property stated in section 3190 of title 15, depending upon the inmate’s privilege group or assigned security level and/or institution mission or disciplinary situation. Subdivision 3190(b) of title 15 lists five personal property schedules that have been incorporated by reference into the California Code of Regulations. They are:

- (1) Authorized Personal Property Schedule — Reception Center Male Inmates (Rev. 10/1/13). This personal property schedule applies to all facilities which operate Male Reception Center Housing.
- (2) Authorized Personal Property Schedule — General Population Levels I, II, and III, Male Inmates (Rev. 10/1/13). This personal property schedule applies to all facilities which operate Levels I, II, III Male Inmate Housing.
- (3) Authorized Personal Property Schedule — Level IV Male Inmates (Rev. 10/1/13). This personal property schedule applies to all facilities which operate Level IV Male Inmate Housing.
- (4) Authorized Personal Property Schedule — Administrative Segregation Units (ASU) / Security Housing Units (SHU) / Psychiatric Services Units (PSU) Male Inmates (Rev. 10/1/13). This personal property schedule applies to all facilities which operate ASU/SHU/PSU Male Inmate Housing.
- (5) Authorized Personal Property Schedule — Female Inmates (Rev. 10/1/13). This personal property schedule applies to all facilities which operate Female Inmate Housing. . . .

In addition, there is a “The Non Disciplinary Segregation (NDS) Personal Property Matrix (12/30/2013)” which “identifies a separate list of allowable personal property afforded to inmates housed in ASU for non disciplinary reasons as affirmed by a classification

committee . . .” (Cal. Code Regs., tit. 15, sec. 3190(c).)

There is also a Religious Personal Property Matrix (Revised 6/27/2013) which “identifies a separate list of allowable personal religious property” (Cal. Code Regs., tit. 15, sec. 3190(c).)

There may also be local facility exemptions to the property lists. (Cal. Code Regs., tit. 15, sec. 3190(b).)

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5, it creates an underground regulation as defined in title 1, OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of “regulation” as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code, sec. 11340(b)). An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

OAL’s authority to issue a determination extends only to the limited question of whether the challenged rule is a “regulation” subject to the APA. This analysis will determine (1) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).²

As stated in *Tidewater*, the first element used to identify a “regulation” is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.³

The challenged rule found in the Memorandum was sent to at least seven institutions and concerns current and/or future inmates under the custody of the Department. The Department has selected certain institutions for a special program whereby certain inmates will be authorized to have additional possessions. Each of the seven institutions is identified as an “Enhanced Program Facility.” The Memorandum states that the Division of Adult Institutions (DAI) selected each of the institutions to implement this new program. The program allows participating inmates personal property items that are in addition to the items allowed pursuant to section 3190 of title 15 of the California Code of Regulations. Therefore, all current and future inmates may be affected by which institutions are selected or not selected for the program.

The rule, therefore, applies generally, and the first element of *Tidewater* is met.

The second element used to identify a “regulation” as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

² Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

³ See also *Roth v. Department Of Veterans Affairs*, (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

The Department adopted regulations at section 3190, and elsewhere in title 15 of the California Code of Regulations, to further implement, interpret and make specific various provisions of its responsibility pursuant to the Penal Code. Section 3190 of title 15 provides lists of what personal property certain inmates may possess. Likewise, the Memorandum also indicates what personal property certain institutions and inmates may be allowed as an Enhanced Program Facility. Penal Code section 5058(a) states:

The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this section and Sections 5058.1 to 5058.3, inclusive. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

Penal Code section 5054, states in part:

Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation.

Penal Code section 2601, states in part:

Subject only to the provisions of that section, each person described in Section 2600 shall have the following civil rights:

(a) Except as provided in Section 2225 of the Civil Code, to inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by the person during the period of imprisonment. . . .

In that the Memorandum further implements, interprets and makes specific what inmates are allowed to possess at the institutions identified as EPF institutions, it is further implementing, interpreting and making specific Penal Code sections 2601, 5054 and 5058, and section 3190 of title 15 of the California Code of Regulations.

The Memorandum, therefore, meets the definition of “regulation” in Government Code section 11342.600.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general ex-

emptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rule-making agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA “shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*” (Emphasis added.)

The agency has not identified an express statutory exemption from the APA that would apply to the Memorandum, nor did OAL find such an exemption.

The challenged rule in this case, the Memorandum, does not apply to only one institution, but provides that certain “participating” inmates at certain selected institutions will also be allowed additional property based upon the Department’s selection of their institution as an EPF. Therefore, the Memorandum does not fall within the local rule exemption.

PUBLIC COMMENTS

OAL did not receive any public comments.

AGENCY RESPONSE

The Department declined to respond to the petition. However, we note that the Memorandum indicates that the Division of Adult Institutions within the California Department of Corrections and Rehabilitation “is currently in the process of requesting the EPF Pilot Program in accordance with Penal Code Section 5058.1.” A review of OAL records did not disclose any rulemakings concerning the subject of this Memorandum at the time this determination was issued.

CONCLUSION

In accordance with the above analysis, OAL determines that the Memorandum meets the definition of “regulation” that should have been adopted pursuant to the APA.

Date: August 11, 2014

/s/
Debra M. Cornez
Director

/s/
Elizabeth A. Heidig
Senior Attorney

Copy:
Dr. Jeffrey Beard
Tim Lockwood

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION
(Summary Disposition)**

**(Pursuant to Government Code Section 11340.5
and
Title 1, section 270, of the
California Code of Regulations)**

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

**REQUESTED BY: BRYANTEVERIDGE
CONCERNING: A Memorandum titled
“Arson Criteria and
Minimum Custody
Eligibility” dated July 30,
2004, issued by the
Department of Corrections
and Rehabilitation.**

**DETERMINATION ISSUED
PURSUANT TO
GOVERNMENT CODE
SECTION 11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California

Code of Regulations, title 1, section 250.¹ OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

CHALLENGED RULE

The rule challenged as an underground regulation is found in a memorandum titled “Arson Criteria and Minimum Custody Eligibility,” dated July 30, 2004 (Memorandum). The Memorandum is addressed to Regional Administrators — Institutions Division, Wardens, Classification Staff Representatives, Classification and Parole Representatives and Correctional Counselor IIIs — Reception Centers. The purpose of the Memorandum as stated “is to assist staff in determining minimum custody program eligibility for inmates with a history of arson or possession of explosive device.”

The original Memorandum was signed by Cheryl Pliler, Deputy Director, Institutions Division of the Department of Corrections and Rehabilitation (Department). A copy of the Memorandum is attached to this determination as Exhibit A.

DETERMINATION

OAL determines that the Memorandum meets the definition of “regulation” that should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

On January 30, 2014, Bryant Everidge (Petitioner) submitted a petition to OAL challenging the Memorandum as an underground regulation. The petition alleges that the Department is using the Memorandum to exclude otherwise eligible inmates from camp and minimum support facilities.

OAL accepted the petition for consideration on March 26, 2014. The petition was published in the Notice Register on April 11, 2014. Comments from the public were solicited until May 12, 2014. No comments were received. The Department was notified that if they chose to respond to the petition they would have to do so

¹ As defined by title 1, section 250(a), an “Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

by May 27, 2014. On June 2, 2014, OAL received a response from the Department which OAL is precluded from considering pursuant to California Code of Regulations, title 1, section 270(h).

The Memorandum concerns the criteria for determining which inmates are excluded from minimum custody eligibility placement and camps. Camp is defined in section 3310 of title 15 of the California Code of Regulations as: “the type of subfacility of an institution which is normally located in a rural area and which has no secure (fenced or walled) perimeter. Camp inmates are generally assigned to conservation and/or road details.” The Memorandum sets forth on pages 2 and 3 exclusions from inmate placement under certain circumstances, including:

CAMP

Inmates are **permanently** (any time they are incarcerated in the Department) excluded from Camp placement under the following circumstances:

- Conviction for, or whose commitment offense includes, Arson of Structure, Forest, or Property, or arson with injuries.
- Conviction, arrest, or detention for Possession of Explosive Device.
- Board of Prison Terms (BPT)/Parole Hearing Division (PHD) Good Cause Finding for Arson Structure, Forest, or Property, or Arson with injuries.
- BPT/PHD Good Cause Finding for Possession of Explosive Device.

MINIMUM SUPPORT FACILITY

Inmates are **permanently** (any time they are incarcerated in the Department) excluded from Minimum Support Facility (MSF) placement under the following circumstances:

- Conviction for, or whose commitment offense includes, Arson with injuries.
- BPT/PHD Good Cause Finding for Arson with injuries.

The Memorandum states that certain inmates under certain conditions will have a case-by-case review to determine eligibility based on an arson-related determination. The Memorandum further sets forth the form and procedures for exclusion from camp and MSF placement based upon an arson related determination and it instructs Reception Center staff to mark the inmate’s Institutional Staff Recommendation Summary (ISRS) with the exclusionary determination of “ARS” as the reason for ineligibility.

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5, it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of “regulation” as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code sec.11340(b)). An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

OAL’s authority to issue a determination extends only to the limited question of whether the challenged rule is a “regulation” subject to the APA. This analysis will determine (1) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).²

As stated in *Tidewater*, the first element used to identify a "regulation" is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.³

The Memorandum was sent to Regional Administrators, Wardens, Classification Staff, Correctional Counselor IIIs—Reception Centers, and copied and blind copied to others. The Memorandum instructs adult institutional staff on Arson Criteria for inmates. The Memorandum states that the purpose of the Memorandum is to "assist staff in determining minimum custody program eligibility for inmates with a history of arson or possession of explosive device." The Memorandum applies to all inmates who may be determined pursuant to the Memorandum to "have a history of arson or possession of explosive device."

The rule, therefore, applies generally, and the first element of *Tidewater* is met.

The second element used to identify a "regulation" as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure.

As stated in the Memorandum, it is to be used to assist staff in determining minimum custody program eligibility for inmates with a history of arson or possession of explosive devices. Penal Code section 5058(a) states:

The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

except as otherwise provided in this section and Sections 5058.1 to 5058.3, inclusive. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

Penal Code section 5054, states in part:

Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation.

Title 15, California Code of Regulations, section 3375.2(a)(3), excludes inmates with a "history of arson" from being housed in a facility constructed primarily of wood. It states:

An inmate meeting one or more of the following administrative or irregular placement conditions, known as administrative determinants, may be housed in a facility with a security level which is not consistent with the inmate's placement score:

...

(3) An inmate with a history of arson shall not be housed in a facility constructed primarily of wood.

Title 15, California Code of Regulations, section 3375.2(b)(2), provides for a determination of "ARS" (Arson) for inmates with a conviction for arson. It states:

The following three-letter codes are used to indicate those administrative or irregular placement conditions known as administrative determinants, which may be imposed by Departmental officials to override the placement of an inmate at a facility according to his/her placement score.

...

(2) ARS. Current conviction, prior conviction, or a sustained juvenile adjudication, as defined in subdivision (b)(26)(A), for arson.

In that the Memorandum contains criteria used for determining which inmates are being excluded from minimum custody eligibility for arson related arrests and which inmates will be assigned the exclusionary determination of "ARS," it further implements, interprets and makes specific Penal Code sections 5054 and 5058, as well as section 3375.2 of title 15 of the California Code of Regulations.

The Memorandum, therefore, meets the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rule-

² Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

³ See also *Roth v. Department Of Veterans Affairs*, (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

making agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA “shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*” (Emphasis added.)

The Department has not identified an express statutory exemption from the APA that would apply to the Memorandum, nor did OAL find such an exemption.

CONCLUSION

In accordance with the above analysis, OAL determines that the Memorandum meets the definition of “regulation” that should have been adopted pursuant to the APA.

Date: August 11, 2014

/s/

Debra M. Cornez
Director

/s/

Elizabeth A. Heidig
Senior Attorney

Copy:

Dr. Jeffrey Beard
Tim Lockwood

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2014-0630-05

CALIFORNIA COASTAL COMMISSION
Filing Fees for Processing Permit Applications and Other Filings

The California Coastal Commission submitted this action amending section 13055 of Title 14, to adjust the fees for permit applications and other filings as prescribed in section 13055(c). The Consumer Price Index for Urban Consumers from the base year, 1988 to 2014,

is 9.6 percent. Therefore, the increase in the current rates is approximately 1.85 percent.

Title 14

California Code of Regulations

AMEND: 13055

Filed 08/07/2014

Agency Contact: Susan Hansch (415) 904-5202

File# 2014-0701-03

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY

Children’s Hospital Program of 2008

This change without regulatory effect filing amends regulations dealing with the Children’s Hospital Bond Act of 2008. The Act, passed by the voters on November 4, 2008, charges the California Health Facilities Financing Authority with implementing a \$980 million grant program funded by general obligation bonds for California children’s hospitals. These amendments remove hyphens, reword references to citations and change Department of Health Services to Department of Public Health.

Title 4

California Code of Regulations

AMEND: 7051, 7052, 7057, 7058, 7059, 7065, 7066, 7068

Filed 08/13/2014

Agency Contact: Rosalind Brewer (916) 653-8243

File# 2014-0701-04

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY

Children’s Hospital Program of 2004

This change without regulatory effect filing amends regulations dealing with the Children’s Hospital Bond Act of 2004. The Act, passed by the voters on November 2, 2004, provides grant funding to the Children’s Hospital Program through sales of general obligation bonds. These amendments remove hyphens, reword references to citations and change Department of Health Services to Department of Public Health.

Title 4

California Code of Regulations

AMEND: 7030, 7031, 7036, 7037, 7038, 7044, 7045, 7047

Filed 08/13/2014

Agency Contact: Rosalind Brewer (916) 653-8243

File# 2014-0625-01

CALIFORNIA SCHOOL FINANCE AUTHORITY

Charter School Facility Grant Program

This rulemaking action by the California School Finance Authority (Authority) is a certification of previous emergency actions 2013-0806-02ER,

2014-0109-02EE, and 2014-0312-01EE. This action implements regulations to govern administration of the Charter School Facility Grant Program, under which the Authority administers grant apportionments beginning with the 2013-2014 fiscal year.

Title 4

California Code of Regulations

ADOPT: 10170.1, 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.8, 10170.9, 10170.10, 10170.11, 10170.12, 10170.13, 10170.14, 10170.15

Filed 08/06/2014

Effective 08/06/2014

Agency Contact: Katrina Johantgen (213) 620-2305

File# 2014-0701-05

DEPARTMENT OF BUSINESS OVERSIGHT

Department of Business Oversight Clean-up Regulations — Part C

This action by the Department of Business Oversight makes various changes without regulatory effect to Title 10 of the California Code of Regulations. The purpose of this action is to change all references to the Departments of Corporations and Financial Institutions and the Commissioner of Corporations to the Department of Business Oversight and the Commissioner of Business Oversight, respectively.

Title 10

California Code of Regulations

AMEND: 250.9, 250.10, 250.11, 250.15, 250.60, 250.61, 260.100.1, 260.100.3, 260.102.8, 260.102.14, 260.102.16, 260.102.19, 260.103.6, 260.105.33, 260.110, 260.131, 260.140.71.2, 260.141.50, 260.146, 260.151, 260.165, 260.241, 260.302, 260.507, 260.608, 260.608.2, 280.100, 280.150, 280.152, 280.153, 280.200, 280.250, 280.300, 280.400, 310.002, 310.100.2, 310.101, 310.106, 310.156.1, 310.156.2, 310.156.3, 310.303, 310.304, 1436, 1454, 1718, 1723, 1726, 1787.1, 1799, 1805.204.1, 1950.122.2, 1950.122.4, 1950.204.3, 1950.206, 1950.314.8, 2030 REPEAL: 2031.1, 2031.2, 2031.3, 2031.4, 2031.5, 2031.6, 2031.7, 2031.8, 2031.9, 2031.10

Filed 08/13/2014

Agency Contact: Karen Fong (916) 322-3553

File# 2014-0701-01

DEPARTMENT OF HEALTH CARE SERVICES

Community Residential Treatment Systems

The Department of Health Care Services (Department) submitted this Section 100 action to make non-substantive amendments to 11 sections under title 9 of the California Code of Regulations. The amendments

update authority and reference citations to all sections; update statutory cross-references in three sections; update the department name in two sections due to the transition of Medi-Cal related mental health services under the Department of Mental Health to the Department as a result of AB 102 (Stats. 2011, c. 29); and update the address of the Department to its current address.

Title 9

California Code of Regulations

AMEND: 531, 532, 532.1, 532.2, 532.3, 532.4, 532.5, 532.6, 533, 534, 535

Filed 08/12/2014

Agency Contact: Lori Manieri (916) 650-6825

File# 2014-0630-07

DEPARTMENT OF JUSTICE

Electronic Recording Delivery System

This rulemaking action amends regulations in Title 11 of the California Code of Regulations regarding the technology, the security of the technology, and the expertise and reliability of persons involved with the technology of transmitting documents concerning real property transactions pursuant to the Electronic Recording Delivery Act of 2004. The action updates standards of the National Institutes of Standards and Technology and Federal Information Processing Standards which are incorporated by reference in these regulations. The action updates 13 state forms used in the Electronic Recording Delivery System. The action also makes a number of other related changes.

Title 11

California Code of Regulations

AMEND: 999.121, 999.129, 999.133, 999.137, 999.141, 999.143, 999.144, 999.145, 999.146, 999.165, 999.166, 999.168, 999.171, 999.172, 999.173, 999.174, 999.176, 999.178, 999.179, 999.190, 999.191, 999.192, 999.193, 999.195, 999.203, 999.204, 999.206, 999.207, 999.209, 999.210, 999.211, 999.217, 999.219, 999.220, 999.221, 999.223

Filed 08/11/2014

Effective 10/01/2014

Agency Contact: Melan Noble (916) 322-0908

File# 2014-0630-08

DEPARTMENT OF PESTICIDE REGULATION

Miscellaneous Clean-up

This filing by the Department of Pesticide Regulation makes changes without regulatory effect by amending and deleting sections in Title 3 of the CCR to update pesticide definitions, use restrictions and reports, and correcting typographical/editorial errors and cross references. This filing adds the term "unregistered" to the

pesticide methyl iodide and eliminates the general requirements, fumigation methods, and reporting requirements applicable when using products containing methyl iodide.

Title 3
California Code of Regulations
AMEND: 6000, 6196, 6400, 6624 REPEAL: 6446, 6446.1
Filed 08/06/2014
Agency Contact:
Linda Irokawa-Otani (916) 445-3991

File# 2014-0723-04
FAIR POLITICAL PRACTICES COMMISSION
Parent-Subsidiary, Related Business Entity — Defined

In this action, the Fair Political Practices Commission adopted section 18700.3, amended section 18438.5, and repealed section 18703.1 of title 2 of the California Code of Regulations, dealing with parent, subsidiary, and otherwise related business entities. OAL's review of FPPC proposed regulations is limited to the provisions of the APA as it was enacted on June 4, 1974, when voters adopted the California Political Reform Act. (*Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer*, (April 27, 1992, C010924 [nonpub. opn.]).) As such, OAL's review is limited to determining if the proposed regulations comply with "the form and style prescribed by the Secretary of State. If the department approves the regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State." (Former Gov. Code, sec. 11380.2, repealed by Stats. 1979, ch. 467, § 2.)

Title 2
California Code of Regulations
ADOPT: 18700.3 AMEND: 18438.5 REPEAL: 18703.1
Filed 08/12/2014
Effective 09/11/2014
Agency Contact:
Virginia Latteri-Lopez (916) 322-5660

File# 2014-0721-06
FAIR POLITICAL PRACTICES COMMISSION
SB 27 — Nonprofit Political Activity Disclosure

In this action, the Fair Political Practices Commission adopted two sections, amended two sections, and repealed one section, dealing with nonprofit political activity disclosure (SB 27, effective 7/1/2014).

Title 2
California Code of Regulations
ADOPT: 18422, 18422.5 AMEND: 18215, 18427.1
REPEAL: 18412
Filed 08/07/2014
Effective 08/29/2014
Agency Contact:
Virginia Latteri-Lopez (916) 322-5660

File# 2014-0627-01
FISH AND GAME COMMISSION
Public Use of Department of Fish and Wildlife Lands

This rulemaking action by the Fish and Game Commission (FGC) consolidates and clarifies existing regulations in title 14 of the California Code of Regulations that govern the public use of lands under the jurisdiction of the Department of Fish and Game (DFG). This action also improves the consistency and enforceability of FGC regulations, provides a statewide procedure and fees for the issuance of special use permits, and designates six recently acquired DFG properties as ecological reserves and one recently acquired DFG property as a wildlife area.

Title 14
California Code of Regulations
ADOPT: 550, 550.5, 551, 630 AMEND: 552, 703
REPEAL: 550, 551, 553, 630
Filed 08/11/2014
Effective 08/11/2014
Agency Contact: Sheri Tiemann (916) 654-9872

File# 2014-0703-03
FISH AND GAME COMMISSION
Marine Protected Areas

This action clarifies and corrects existing regulation in a variety of ways, including without limitation, correcting the permit authority from the Fish and Game Commission to the Department of Fish and Wildlife, correcting names and designations of species, clarifying confusing language regarding transiting through designated areas, clarifying terms associated with categories of gear used for taking species, correcting boundary errors, and making nonsubstantive changes in names of protected areas. The regulation also adds an allowance in certain areas for incidental take of non-target species of up to 5% by weight.

Title 14
California Code of Regulations
AMEND: 632
Filed 08/12/2014
Effective 10/01/2014
Agency Contact: Sherrie Fonbuena (916) 654-9866

File# 2014-0709-01
 PHYSICIAN ASSISTANT BOARD
 Section 100 Changes: Sponsored Free Health Care
 Events — Revised Form

This action by the Physician Assistant Board makes changes without regulatory effect to section 1399.621 of title 16 of the California Code of Regulations. The purpose of this action is to amend Form 901-A, incorporated by reference in section 1399.621, to include updated contact information.

Title 16
 California Code of Regulations
 AMEND: 1399.621
 Filed 08/13/2014
 Agency Contact: Glenn L. Mitchell (916) 561-8783

File# 2014-0630-02
 VICTIM COMPENSATION AND GOVERNMENT
 CLAIMS BOARD
 CalVCP Program Regulations

This rulemaking action by the California Victim Compensation and Government Claims Board (Board) makes substantive and non-substantive changes to regulation sections in Title 2 of the California Code of Regulations. These changes include revisions to the verification process for initial eligibility, income/support loss, payment process, and numerous grammatical changes.

Title 2
 California Code of Regulations
 ADOPT: 649.24 AMEND: 649, 649.4, 649.8,
 649.26, 649.29, 649.32, 649.40, 649.43
 Filed 08/12/2014
 Effective 10/01/2014
 Agency Contact: Tanya Bosch (916) 491-3851

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN March 12, 2014 TO
 August 13, 2014**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2
 08/12/14 ADOPT: 18700.3 AMEND: 18438.5
 REPEAL: 18703.1
 08/12/14 ADOPT: 649.24 AMEND: 649, 649.4,
 649.8, 649.26, 649.29, 649.32, 649.40,
 649.43
 08/07/14 ADOPT: 18422, 18422.5 AMEND:
 18215, 18427.1 REPEAL: 18412
 07/30/14 AMEND: 679
 07/14/14 AMEND: 549
 05/30/14 REPEAL: 649.56
 05/29/14 AMEND: 22600, 22600.1, 22600.2,
 22600.5, 22600.6, 22600.7, 22600.8,
 22600.9, 22601, 22601.3, 22601.4,
 22601.7 REPEAL: 22601.1
 05/19/14 ADOPT: 1181.1, 1181.2, 1181.3, 1181.4,
 1181.5, 1181.6, 1181.7, 1181.8, 1181.9,
 1181.10, 1181.11, 1181.12, 1181.13,
 1182.1, 1182.2, 1182.3, 1182.4, 1182.5,
 1182.6, 1182.7, 1182.8, 1182.9, 1182.10,
 1182.11, 1182.12, 1182.13, 1182.14,
 1182.15, 1182.16, 1183.1, 1183.2,
 1183.3, 1183.4, 1183.5, 1183.6, 1183.7,
 1183.8, 1183.9, 1183.10, 1183.11,
 1183.12, 1183.13, 1183.14, 1183.15,
 1183.16, 1183.17, 1183.18, 1184.1,
 1185.1, 1185.2, 1185.3, 1185.4, 1185.5,
 1185.6, 1185.7, 1185.8, 1185.9, 1186.1,
 1186.2, 1186.3, 1186.4, 1186.5, 1186.6,
 1186.7, 1187.1, 1187.2, 1187.3, 1187.4,
 1187.5, 1187.6, 1187.7, 1187.8, 1187.9,
 1187.10, 1187.11, 1187.12, 1187.13,
 1187.14, 1187.15, 1188.1, 1188.2,
 1190.1, 1190.2, 1190.3, 1190.4, 1190.5
 REPEAL: 1181, 1181.1, 1181.2, 1181.4,
 1182, 1182.1, 1182.2, 1182.3, 1182.4,
 1182.5, 1183, 1183.01, 1183.02, 1183.03,
 1183.04, 1183.05, 1183.06, 1183.07,
 1183.08, 1183.081, 1183.09, 1183.1,
 1183.11, 1183.12, 1183.13, 1183.131,
 1183.14, 1183.2, 1183.21, 1183.25,
 1183.30, 1183.31, 1183.32, 1184.5,
 1184.6, 1184.7, 1184.8, 1184.9, 1184.10,
 1184.11, 1185, 1185.1, 1185.2, 1185.21,
 1185.3, 1185.4, 1185.5, 1185.6, 1185.7,
 1186, 1186.5, 1186.51, 1186.52, 1186.53,
 1186.54, 1186.55, 1186.6, 1186.61,
 1186.62, 1186.63, 1186.64, 1186.65,
 1186.7, 1186.71, 1186.72, 1186.73, 1187,
 1187.2, 1187.3, 1187.4, 1187.5, 1187.6,
 1187.7, 1187.8, 1187.9, 1188, 1188.1,
 1188.2, 1188.3, 1188.31, 1188.4, 1189,
 1189.1, 1189.2, 1189.3, 1189.6, 1189.61,
 1190, 1190.01, 1190.02, 1190.03,
 1190.04, 1190.05

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05/01/14 ADOPT: 18706.1 AMEND: 18706
05/01/14 AMEND: 18950.1
05/01/14 AMEND: 18705.2 REPEAL: 18704.2
04/30/14 AMEND: 18704
04/30/14 AMEND: 18707.9
04/16/14 ADOPT: 599.760.1 AMEND: 599.757,
599.759, 599.761, 599.768, 599.769
REPEAL: 599.755, 599.760, 599.764,
599.765, 599.766, 599.767

Title 3

08/06/14 AMEND: 6000, 6196, 6400, 6624
REPEAL: 6446, 6446.1
08/05/14 REPEAL: 3277
07/22/14 AMEND: 3591.13(a)
07/10/14 AMEND: 3424
06/27/14 AMEND: 1430.142
06/24/14 AMEND: 3435(b)
06/17/14 AMEND: 3435(b)
06/02/14 AMEND: 3435(b)
05/14/14 ADOPT: 1280, 1280.1, 1280.8, 1280.10
AMEND: 1280.7
05/12/14 AMEND: 3591.20(a)
04/24/14 AMEND: 3435(b)
04/04/14 AMEND: 3435(b)
03/19/14 AMEND: 3406(b)
03/18/14 ADOPT: 6471 AMEND: 6000, 6400
03/18/14 AMEND: 3423(b)

Title 4

08/13/14 AMEND: 7051, 7052, 7057, 7058, 7059,
7065, 7066, 7068
08/13/14 AMEND: 7030, 7031, 7036, 7037, 7038,
7044, 7045, 7047
08/06/14 ADOPT: 10170.1, 10170.2, 10170.3,
10170.4, 10170.5, 10170.6, 10170.7,
10170.8, 10170.9, 10170.10, 10170.11,
10170.12, 10170.13, 10170.14, 10170.15
08/06/14 ADOPT: 10170.16, 10170.17, 10170.18,
10170.19, 10170.20, 10170.21,
10170.22, 10170.23, 10170.24
08/05/14 ADOPT: 7113, 7114, 7115, 7116, 7117,
7118, 7119, 7120, 7121, 7122, 7123,
7124, 7125, 7126, 7127, 7128, 7129
07/10/14 ADOPT: 5600, 5610, 5620, 5630, 5640
AMEND: 5000, 5144, 5170, 5200, 5205,
5230, 5240, 5255, 5350, 5370
06/30/14 AMEND: 10030, 10031, 10032, 10033,
10034, 10035, 10036
06/18/14 AMEND: 12505
06/18/14 AMEND: 8070, 8072
06/16/14 AMEND: 4001 ADOPT: 4002.9
06/13/14 AMEND: 8034
06/11/14 ADOPT: 12387 AMEND: 12360, 12386
06/09/14 ADOPT: 4402, 4403, 4496, 4496.1,
4496.2, 4496.3, 4496.4, 4496.5, 4496.6

05/19/14 AMEND: 7030, 7032, 7033, 7034, 7035,
7036, 7037, 7040, 7042
05/15/14 ADOPT: 7113, 7114, 7115, 7116, 7117,
7118, 7119, 7120, 7121, 7122, 7123,
7124, 7125, 7126, 7127, 7128, 7129
05/12/14 AMEND: 1632
04/07/14 AMEND: 1656, 1658
04/03/14 AMEND: 10030, 10031, 10032, 10033,
10034, 10035, 10036
04/02/14 AMEND: 2066
03/28/14 AMEND: 10302, 10305, 10315, 10317, 10
320, 10322, 10325, 10326, 10327, 10328,
10337
03/24/14 ADOPT: 10170.1, 10170.2, 10170.3,
10170.4, 10170.5, 10170.6, 10170.7,
10170.8, 10170.9, 10170.10, 10170.11,
10170.12, 10170.13, 10170.14, 10170.15

Title 5

07/28/14 ADOPT: 15494, 15495, 15496, 15497
07/23/14 AMEND: 850, 851, 852, 853, 853.5, 855,
857, 858, 859, 861, 862, 862.5, 863, 864
REPEAL: 854, 864.5, 865, 866, 867,
867.5, 868
07/11/14 ADOPT: 80693, 80694
06/26/14 ADOPT: 9517.3
06/13/14 ADOPT: 19810 REPEAL: 19810, 19812,
19813, 19814, 19815, 19816, 19816.1,
19817, 19817.1, 19817.2, 19817.5,
19818, 19819, 19820, 19821, 19821.5,
19822, 19823, 19824, 19824.1, 19825,
19825.1, 19827, 19828, 19828.1,
19828.2, 19828.3, 19828.4, 19829,
19829.5, 19830, 19830.1, 19831, 19832,
19833, 19833.5, 19833.6, 19834, 19835,
19836, 19837, 19837.1, 19837.2,
19837.3, 19838, 19840, 19841, 19843,
19844, 19845, 19845.1, 19845.2, 19846,
19846.1, 19847, 19848, 19849, 19850,
19851, 19851.1, 19852, 19853, 19854,
19854.1, 19855
05/19/14 AMEND: 80035.5
05/05/14 ADOPT: 14037, 14038, 14039, 14040,
14041, 14042
05/05/14 ADOPT: 3051.19, 3051.20, 3051.21,
3051.22, 3051.23, 3051.24 AMEND:
3001, 3023, 3025, 3029, 3030, 3031,
3040, 3043, 3051, 3051.1, 3051.2,
3051.3.,4, 3051.5, 3051.6, 3051.7,
3051.75, 3051.8, 3051.9, 3051.10,
3051.11, 3051.12, 3051.13, 3051.14,
3051.15, 3051.16, 3051.17, 3051.18,
3060, 3061, 3064, 3065, 3068, 3083,
3084, 3088 REPEAL: 3054
04/15/14 AMEND: 70020

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04/01/14	AMEND: 80303	5208.1, 5209, 5210, 5211, 5212, 5213,
04/01/14	ADOPT: 15498, 15498.1, 15498.2, 15498.3	5214, 5215, 5217, 5218, 5219, 5220, 8358,8359
Title 8		
07/31/14	AMEND: 4542	
07/31/14	ADOPT: 5120	
07/10/14	ADOPT: 32036, 32037, 32610, 32611, 32806, 32808, 32810, 95000, 95010, 95020, 95030, 95040, 95045, 95050, 95070, 95080, 95090, 95100, 95150, 95160, 95170, 95180, 95190, 95200, 95300, 95310, 95320, 95330 AMEND: 31001, 32020, 32030, 32040, 32050, 32055, 32060, 32075, 32080, 32085, 32090, 32091, 32100, 32105, 32120, 32122, 32130, 32132, 32135, 32136, 32140, 32142, 32145, 32147, 32149, 32150, 32155, 32162, 32164, 32165, 32166, 32168, 32169, 32170, 32175, 32176, 32178, 32180, 32185, 32190, 32200, 32205, 32206, 32207, 32209, 32210, 32212, 32215, 32220, 32230, 32295, 32300, 32305, 32310, 32315, 32320, 32325, 32350, 32360, 32370, 32375, 32380, 32400, 32410, 32450, 32455, 32460, 32465, 32470, 32500, 32602, 32605, 32612, 32615, 32620, 32621, 32625, 32630, 32635, 32640, 32644, 32645, 32647, 32648, 32649, 32650, 32661, 32680, 32690, 32700, 32720, 32721, 32722, 32724, 32726, 32728, 32730, 32732, 32734, 32735, 32736, 32738, 32739, 32740, 32742, 32744, 32746, 32748, 32750, 32752, 32754, 32761, 32762, 32763, 32770, 32772, 32774, 32776, 32980, 32990, 32992, 32993, 32994, 32995, 32996, 32997	05/05/14 ADOPT: 1929 AMEND: 1504, 1930, 1931, 1932, 1934, 1935, 1936, 5154, 5191, 5194, 5415, 5417, 5449, 5451, 5531, 5532, 5533, 5534, 5535, 5537, 5538, 5541, 5542, 5543, 5545, 5546, 5547, 5549, 5555, 5556, 5558, 5560, 5566, 5568, 5569, 5570, 5573, 5574, 5575, 5576, 5577, 5578, 5579, 5580, 5583, 5585.1, 5589, 5590, 5592, 5593, 5594, 5595, 5596, 5597, 5598, 5599, 5601, 5602, 5606, 5607, 5608, 5616, 5617, 5618, 5619, 5620, 5621, 5622, 5624
		04/28/14 AMEND: 2940.2, 2940.7, 8602, 8610, 8611,8615
		04/16/14 AMEND: 10205.14 REPEAL: 9788.01, 9788.1, 9788.11, 9788.2, 9788.3, 9788.31, 9788.32, 9788.4, 9788.45, 9788.5, 9788.6, 9788.7, 9788.8, 9788.9, 9788.91
		04/14/14 AMEND: 3650
		04/14/14 AMEND: 5001
		04/09/14 AMEND: 1619.1(b)
		04/03/14 AMEND: 4355
		04/01/14 AMEND: 1520, 3384
		Title 9
		08/12/14 AMEND: 531, 532, 532.1, 532.2, 532.3, 532.4, 532.5, 532.6, 533, 534, 535
		07/29/14 AMEND: 1840.205, 1850.325
		06/23/14 AMEND: 4500
		Title 10
		08/13/14 AMEND: 250.9, 250.10, 250.11, 250.15, 250.60, 250.61, 260.100.1, 260.100.3, 260.102.8, 260.102.14, 260.102.16, 260.102.19, 260.103.6, 260.105.33, 260.110, 260.131, 260.140.71.2, 260.141.50, 260.146, 260.151, 260.165, 260.241, 260.302, 260.507, 260.608, 260.608.2, 280.100, 280.150, 280.152, 280.153, 280.200, 280.250, 280.300, 280.400, 310.002, 310.100.2, 310.101, 310.106, 310.156.1, 310.156.2, 310.156.3, 310.303, 310.304, 1436, 1454, 1718, 1723, 1726, 1787.1, 1799, 1805.204.1, 1950.122.2, 1950.122.4, 1950.204.3, 1950.206, 1950.314.8, 2030 REPEAL: 2031.1, 2031.2, 2031.3, 2031.4, 2031.5, 2031.6, 2031.7, 2031.8, 2031.9, 2031.10
		07/31/14 ADOPT: 6456
06/24/14	AMEND: 5155	
06/03/14	AMEND: 9789.30, 9789.31, 9789.32, 9789.33, 9789.37, 9789.39	
06/02/14	AMEND: 5605	
05/30/14	ADOPT: 13660, 13660.1, 13661, 13662, 13663, 13663.5, 13664, 13665, 13665.5, 13666, 13666.1, 13666.2, 13666.5, 13667, 13667.1, 13667.40 REPEAL: 13660, 13661, 13662	
05/29/14	AMEND: 1598, 1599	
05/14/14	ADOPT: 344.76, 344.77	
05/05/14	AMEND: 1529, 1532, 1532.1, 1532.2, 1535, 3204, 5150, 5157, 5161, 5189, 5190, 5191, 5192, 5194, 5197, 5198, 5200, 5201, 5202, 5206, 5207, 5208,	

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07/23/14 ADOPT: 10.190500, 10.190501
 07/21/14 ADOPT: 6650, 6652, 6654, 6656, 6657, 6658, 6660, 6662, 6664, 6666, 6668, 6670
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