California Fish and Wildlife Strategic Vision Project
Notes from the March 9, 2012 Workshop on Mandates

March 12, 2012

This document contains notes from the March 9, 2012 workshop where participants discussed potential recommendations related to mandates of the California Department of Fish and Game and the California Fish & Game Commission (F&GC). The notes in this document do not reflect the evolving and sometimes meandering nature of the discussion; some notes that appear early in the document may have, in fact, been discussed later in the workshop and vice versa.

The potential recommendations in this document were presented in documents prepared specifically for the workshop unless otherwise identified. Suggested additional text identified during the workshop is in underlined text (like this) while suggested deletions are in strikethrough text ~~(like this)~~.

These potential recommendations will be discussed on March 15, 2012 during meetings of the California Fish and Wildlife Strategic Vision (CFWSV) Blue Ribbon Citizen Commission and CFWSV Stakeholder Advisory Group.

Public comment: Quagga mussels missed. DFG should address invasive species – add a definition of invasive species in either the California Fish and Game Code or the Public Resources Code as well as simple authority to respond to invasive species that affect natural resources. Make it a "may" authority. Per discussions during the statutes and regulations workshop on Thursday, Doug Johnson is working with Karen Buhr and Noelle Cremers on specific language to be shared for the March 15 meetings. SAG members requested that a funding source be identified with any recommendation for DFG action/mandate. See also March 5 letter submitted by California Invasive Plant Council.

Payment in lieu of taxes (PILT) to counties when DFG acquires lands – backfill for lost property taxes. DFG in arrears over $19 million across the state. The line item in the state budget for PILT covers multiple items and PILT tends to drop to the bottom when there are not enough monies to cover all. See also March 1 message submitted by Nick Konovaloff for the Regional Council of Rural Counties.

Potential Recommendations

Workshop notes: Participants suggest that recommendation #1, below, be eliminated.

1. Mandates Recommendation: Review DFG/FGC responsibilities/mandates to determine whether or not they should be combined, eliminated or transferred elsewhere.

Implementation actions include:

- Create workgroup of DFG/FGC staff to review current responsibilities of DFG/FGC and make recommendations on potential transfer, combination, or elimination.
- Work with stakeholders to get their recommendations on potential transfer, combination, or elimination of responsibilities.
- Work with other state and federal agencies to investigate feasibility of transfer, combination, or elimination of responsibilities.

- Work with the legislature (members and staff) to gain support for transfer, combination, or elimination of responsibilities.

Description: DFG/FGC has an incredibly broad mandate, which creates challenges in efficiently implementing all the programs over which it has responsibility. With the current interest in reviewing Title 14 of the California Code of Regulations and the California Fish and Game Code to identify: (1) inconsistencies; (2) redundancies; (3) unused and outdated code sections; (4) sections creating parallel systems and processes to be consolidated; and (5) opportunities to restructure the codes to group similar statutes and regulations. It may be worth considering eliminating or transferring some responsibilities outside of DFG; some examples that have been raised in discussions are placement of OSPR within DFG, the role of the California Ocean Protection Council, and whether some of the water branch's activities may be more appropriate with the State Water Resources Control Board.

Ties to Strategic Vision: Goal 4, Objective 3.

Workshop notes: Participants suggest that recommendations #2 and #3, below, be considered during the DFG strategic planning effort or when reviewing mandates.

2. Office of Spill Prevention and Response Recommendation: Reestablish that the OSPR administrator has autonomous control over hiring, personnel, budgeting, and funds regarding marine oil spill prevention and response activities, to ensure the ability to carry out "best achievable protection" of the coast from spills, pursuant to the California Government Code (Lempert-Keene-Seastrand Oil Spill Prevention and Response Act).

3. Office of Spill Prevention and Response Recommendation: Use an existing civil service classification to hire a law enforcement pollution investigator with powers to enforce the provisions of the Government Code relevant to OSPR and the administrator.

Potential Additional Recommendations Submitted by Noelle and Eileen

Note that the language in these two recommendations came from the second phase of the CFWSV Project.

Workshop notes: Yesterday participants in the funding workshop developed a recommendation for a commission being created by the legislature to look at both funding and mandates. The recommendation put forth as written creates a commission, but the participants were not able to come to a conclusion about the membership and structure of the proposed commission – homework volunteers are developing models for the commission, to be presented and discussed on March 15. The potential recommendation includes a suggestion that whatever ideas and recommendations the commission develops be voted on by the legislature as a package, up or down (no cherry-picking). Other potential funding and efficiencies recommendations are suggested for the commission and others may be appropriate for the DFG strategic planning effort. Some concerns raised that the commission being asked to do too much and perhaps needs to focus on stable funding, perhaps after

the evaluation by the California Law Review Commission (CLRC), a general review of mandates, and an evaluation of program costs and fees.

Suggestion that still need to recommend a reconstituted SAG for DFG strategic planning. If commission members are just experts, then the commission could consult with the reconstituted SAG to combine the best of both worlds. While logical to wait, the CLRC review will take a couple of years and so should consider developing a recommendation that can be implemented now. How much power this commission is given will help determine what information will be provided in a timely manner – also in the best interest of DFG to be collaborative in such a process since DFG has not been able to resolve problems on its own to date and stakeholders are here now, willing to help. Need to identify potential membership and makeup of commission in preparation for March 15 – want people with expertise and the time necessary to do this work. Suggest an independent body and individuals, not from a particular interest group to push a specific agenda – we are all good at doing that ourselves.

Discussion about what the commission might be able to accomplish – both funding and mandates together? Yesterday original suggestion was a small group of people who are experts in funding, who may not be experts in the subject areas and mandates conversation.

Suggest stakeholder process for what CLRC is not going to address. Have been and still seeking through this process information about priorities within DFG for various activities; not forthcoming. Need to identify obsolete or duplicative mandates. Mandates need to be addressed ahead of, or at least slightly ahead of, any funding discussion. The legislature has to be involved in the mandates conversation since that is where mandate changes will be made. Someone needs to prioritize the mandates, not just look at the under or unfunded ones. Don't need to know so much what is the dollar amount as much as what or which activities in the big picture need to be funded, then can talk about how much money is needed to do those things.

This commission with expertise in funding should be able to analyze the various funding sources and the costs associated with using each source (i.e., bonds, fees, taxes). Some discomfort in giving a commission authority to just look at funding without also including the mandates question. Need to sell all this not only to the legislature, but also to the people of California. Who are the members of the commission? Economist? Sociologist? Fisherman? How to generate political momentum if DFG does show what it can do internally to help fix itself. DFG still needs to show how it will begin implementing the recommendations of this strategic visioning process – show successes and improvements in order to build trust with stakeholders and the public. Mandates discussion needs to happen first and include stakeholders, but not sure that is the same group to address funding.

Have been told there is a strategic planning effort in place beginning this spring. Hopefully DFG will be far enough along that process with stakeholder participation that it will help inform any further discussions about mandates and funding. Perhaps hire professionals in the areas of expertise desired to compose the proposed commission. Need a stakeholder component to the funding and mandates discussions, though not necessarily as members of the commission.

Ongoing SAG-like body recommendation? What would that group address and how often? Start with the various interests represented on the current SAG for discussion about membership on a long-term

body. Could weigh-in on the strategic planning effort. Take advantage of the trust, collaboration and knowledge built during the strategic vision and help create some continuity. Such a group can advocate on behalf of DFG in legislation and budgeting. Perhaps the proposed commission should look to a long-term SAG-type body for input and feedback? Don't want all we've done [in the strategic visioning process] and what the proposed commission might do to ultimately end up on a shelf.

Perhaps recommend that during the DFG strategic planning effort, please look at mandates (what is it you do, where has the money gone, what is not a priority) to tee up a discussion for a future stakeholder group created by legislation that is pursued during 2012 and effective Jan 2013. Following that, at some future time, a group that looks at funding would begin its work. Maybe the secretary for resources leads such an effort. Maybe ask DFG to start with evaluating and potentially re-writing its mission and vision and then how does the Fish and Game Code comport with that mission and vision. Another important piece is that the proposed commission must also look at mandates, otherwise they can receive mandates recommendations (from somewhere) and then simply toss them out the window if the members do not agree with what was recommended.

We have tried unsuccessfully in this process to obtain information from DFG about mandates and priorities. DFG is not hearing the message that there is no more funding right now. Told yesterday the "may" and "shall" exercise not helpful since "may" does not always mean it drops off the list of priorities when there is no funding. Still pursuing by asking questions about level of service, level of funding, but not able to complete this week.

Let's take a break for 10-15 minutes. Afterwards we will come back and ask what is the desired outcome and how do we achieve? What is the recommendation? Who are the types of people you would suggest be appointed to a commission? Same or different people if focus is on funding or focus is on funding and mandates?

Post-break: Concern expressed that the effort Jay Ziegler and other volunteers are working on with funding should not be a stand-alone effort; funding and mandates discussions together to be sure funding group does not ignore question of mandates. Stakeholder group may be politically easier to get approved by the legislature than a commission. Perhaps need to hold this discussion for March 15. In a perfect world would have the mandates discussion first, followed by funding; however, don't want the funding folks to move ahead of the mandates discussion. With a small commission each member must represent a larger constituency – seemed easier to do in the stakeholder process with everyone stepping back and thinking more broadly, but have not had to have the really "hard" discussions where positions are more likely to emerge. Concern expressed about DFG being the appointing authority. Have to try to get as close as possible to having commission members without an agenda – maybe have the governor appoint them? The commission will have to function well offline in order to truly accomplish anything; made more difficult if established in legislation due to Bagley-Keene requirements.

Move potential mandates recommendation (immediately below) forward for March 15 SAG and BRCC meetings. No changes to the text proposed during workshop.

Potential Mandates Recommendation: Seek legislation that would create a stakeholder process to review state laws that mandate action by DFG and F&GC for the purpose of recommending: 1) which mandates should be repealed due to being obsolete, lacking a constituency or not benefiting natural resources; 2) which mandates should be consolidated with others to enhance potential efficiencies and effectiveness; 3) which mandates should be performed by other agencies/departments instead of DFG and/or F&GC; 4) which mandates should be priorities pursuant to limited fiscal resources. In this case, stakeholders must not be limited to various interest groups and the DFG/F&GC, but also include representation from the California State Legislature and other state agencies/departments that share mandates with DFG and F&GC.

Description: Over the years, the legislature has passed so many laws mandating action by DFG and F&GC (especially DFG) on so many different issues that there would never be adequate staff or resources to perform all of them. New mandates are regularly added and none are removed, creating a disservice and adverse impacts to state employees, the public and natural resources. So many mandates, especially during tough fiscal times, result in priorities being determined by annual budgets and judgment calls by individual employees. This recommendation will be a difficult and time-consuming task, but it is necessary to help create a more effective DFG and F&GC into the future.

Implementation Assessment

- Method: Administrative
- Timeline: Medium-term
- Level of likely BRCC/SAG agreement: High

Workshop notes: The potential statutes and regulations recommendation (immediately below) is recommended to be eliminated.

Potential Statutes and Regulations (and Governance) Recommendation: Review the California Fish and Game Code and Title 14 of the California Code of Regulations to identify and make recommendations to: (1) resolve inconsistencies; (2) eliminate redundancies; (3) eliminate unused and outdated code sections; (4) consolidate sections creating parallel systems and processes; and (5) restructure codes to group similar statutes and regulations.

Implementation steps include:

- Make legislative request to the California Law Revision Commission to review and recommend, in cooperation with the work group, "clean-up" of Fish and Game Code and Title 14.
- Establish a work group made up of DFG staff and stakeholders.
- Obtain priorities for regulatory and statutory review from stakeholders.
- Review Title 14 of California Code of Regulations.
- Review California Fish and Game Code.

Description: The California Fish and Game Code and Title 14 of the California Code of Regulations both need to be reviewed to reduce redundancy and improve consistency and clarity. The director of DFG should create a work group to consist of a representative each from the DFG Legislative Office, the DFG Office of General Counsel, and the DFG Law Enforcement Division, as well as several (4-6) individuals from different programs within DFG (e.g., wildlife, fisheries, marine, habitat conservation, etc.) to review the DFG/F&GC portions of Title 14 of the California Code of Regulations and, subsequently, the California Fish and Game Code.

Because there are numerous regulations within Title 14 that address matters more appropriately dealt with in the Fish and Game Code, it may be advisable to review Title 14 first and, in so doing, prepare a list of sections to delete from Title 14 and add to the Fish and Game Code. Proceeding in this manner may also reduce the scope of substantive amendments to Title 14, which, unlike revising the Fish and Game Code, requires costly and time-consuming compliance with the California Environmental Quality Act.

At the outset of this process and periodically throughout, the work group would meet with stakeholders to ascertain their opinions and suggestions for amending, repealing, consolidating, and simplifying the codes. For particularly complicated or controversial areas, it may be useful to establish ad hoc groups comprised of both DFG staff and stakeholders to work through possible revisions. The work group would also consult with and utilize other DFG staff as needed and, where appropriate, with representatives of state and federal agencies with parallel or overlapping jurisdiction to identify opportunities to coordinate different statutory schemes. Coordination with other agencies should also look at eliminating duplicative mandates.

The work group would ultimately prepare a proposed plan for revising the codes. Although the subject-matter expertise of DFG staff and stakeholders would be critical at the earlier phases, it is advisable to consult the California Law Revision Commission (CLRC) early in the process to ensure the approach followed is appropriately structured to facilitate a large-scale code revision. At a minimum, once the plan is prepared and approved by DFG management the work group would consult and work with CLRC to determine the best approach to and to draft the actual code revision to follow.

This process could also proceed in phases by focusing first on less controversial and complicated areas such as redundancies and regrouping code sections and then proceed to more difficult issues like merging parallel processes (e.g., consolidating the California Environmental Quality Act, the Native Plant Protection Act, and the fully protected statutes). Ultimately, simplified regulations will make it easier to communicate and improve compliance.

Finally this recommendation only addresses review of existing regulations and code. Further discussion is necessary to improve the regulatory development process for DFG/F&GC and stakeholders.

Implementation Assessment

- Method: Administrative, regulatory, statutory
- Timeline: Medium-term/long-term

Ties to Strategic Vision: Goal 3 (An Effective Organization), Objective 1 (Coordinate resource planning, policies, practices, processes and regulations with other agencies and organizations and statewide within DFG) and Objective 3 (Develop, align and inform clear fish and wildlife statutes, regulations and governance).

Other Potential Additional Recommendations

Potential additional recommendation; not necessarily related to mandates, but not sure where else to bring up these ideas. It doesn't seem like there is any "return loop" in place after the strategic vision process ends and after the DFG strategic planning effort.

Suggestion is legislation that requests a report back from DFG to the legislature and governor, hold hearing for stakeholders to report back, etc. Looking for a way to require DFG to report back and show what did nor did not work out of the strategic vision. Progress report on the strategic vision implementation. Vehicle? Do we really need legislation? Another way to accomplish?

Is this perhaps similar to the suggestion yesterday that an ongoing SAG process to build on the continuity, trust and collaboration? Would like this to be formalized. No, not the same; does not require a SAG-like body to provide a report. Perhaps ask Huffman and Pavley to hold a joint hearing?

Suggested new recommendation: Request a report from DFG and F&GC to the legislature and governor by June 1, 2013 to identify progress in implementing recommendations within the strategic vision. Recommend that the chairs of those legislative committees with jurisdiction over fish and wildlife hold a joint hearing following the release of the report.

Participants in the mandates workshop have a suggest addition to a potential new recommendation from the funding workshop (see the underlined text): Following the CFWSV process, the SAG recommends that a stakeholder group continue as an advisory body to DFG and F&GC. Membership would potentially include existing SAG members and others with an interest in DFG and F&GC activities. The purpose of the group would be to:

1. Facilitate enhanced communication among DFG, F&GC and the diverse stakeholder community;
2. Provide guidance and recommendations on issues of mutual interest and importance, including the DFG strategic planning effort;
3. Serve as an advocate for DFG and F&GC to the legislature and other decision-making bodies.

The group could meet once or twice a year to discuss issues of importance, or to be convened as needed to present information on critical issues.

Workshop notes (continued): Representation on a SAG-like body needs to consider Asian fishermen. There may be other interests that should be represented, but there are challenges associated with finding appropriate participants, as seen in the SAG recruitment effort last year.

Another suggested recommendation: Ask DFG Marine Region to update and expand memo from Director Broddrick about costs of commercial fisheries. What does it cost for DFG to manage the various fisheries? Huffman has introduced legislation twice on the topic of commercial fisheries and was unsuccessful due to insufficient information about the costs of commercial fishing. Suspect he will introduce legislation again and it would be helpful to have updated and accurate information. Other SAG members expressed concern that this kind of recommendation is too "in the weeds" for the strategic vision process. Perhaps have Huffman request this information from DFG instead.

Public comment: In addition to a definition in the California Fish and Game Code for invasive species, also need to provide DFG with the authority/mandate to manage and address invasive species (SAG members requested that a funding source be included).