California Fish and Wildlife Strategic Vision Project
Phase 3 Potential Recommendations Related to Statutes and Regulations
March 6, 2012

This document presents potential recommendations related to statutes and regulations, to be considered in Phase 3 of the California Fish and Wildlife Strategic Vision (CFWSV) Project; these recommendations were also presented in a document dated February 28, combined with potential recommendations related to mandates, funding and efficiencies, and the California Fish and Game Commission.

The potential recommendations included in this document came from multiple sources; to identify from where the recommendation last originated, this document includes a code in curly brackets that precedes the title text of each recommendation. The codes are:

{B} The recommendation was adopted by the Blue Ribbon Citizen Commission (BRCC), and the executive committee requested additional discussion be held.

{N} The potential recommendation was not fully considered by the SAG on February 3, 2012.

This document also retains notes from homework volunteers and individual SAG members for those recommendations that were not fully discussed on February 3, as well as staff notes, which are in brackets and underlined [like this]. Any new proposed text is underlined like this.

1. {B} Statutes and Regulations Recommendation: Perform a Comprehensive Review and Update of the California Fish and Game Code and Related Laws

The BRCC recommends that a comprehensive review of state statutes, constitutional provisions and regulations concerning California Department of Fish and Game (DFG) and the California Fish and Game Commission (F&GC) be undertaken. That review, which should be of a technical, nonpartisan nature, should be initiated without further delay. The independent California Law Revision Commission is an ideal body to undertake the constitutional and statutory review, and to then make recommendations for curative amendments to the California State Legislature for consideration and enactment. After that process is completed, DFG and the Secretary for Natural Resources should undertake a conforming review process of California's regulations implementing those constitutional and statutory mandates.

California statutes affecting DFG and F&GC have evolved over 140 years. During that period, new and sometimes inconsistent legal mandates have been imposed via legislation. A technical, nonpartisan review would provide recommendations for curative amendments to address the inconsistencies.

[Staff note: A variation of this recommendation was adopted by the executive committee and included in the interim strategic vision.]

2. {N} Statutes and Regulations Recommendation: Evaluate potential statutory changes to the California Endangered Species Act (CESA) to improve the permitting process: Uniformity in permitting process, efficiency in permitting, consistency in the application of CESA standards, and opportunity for applicants to appeal DFG decisions.

[SAG member comment: I don't think there is agreement that all of these things in the recommendation should proceed or at least there is concern about the 'details' of implementation. I think members of the SAG as a whole would be more comfortable with a recommendation to evaluate such changes than a recommendation to MAKE them.]

Implementation actions include:

- Provide the ability for DFG to allow incidental take for threatened species through regulations (as opposed to individual permits), similar to federal 4(d) rule and incidental take for candidates.

  [Homework discussion: Suggest holding as high priority for discussion during third phase.]

- Create an internal appeals process that an applicant can invoke when unable to reach agreement on terms for an incidental take permit.

  [Homework discussion: Suggest including with recommendation #2 now.]

- Allow arbitration similar to 1600 arbitration for incidental take permits issued under CESA (consistency of application of standards).

  [Homework discussion: Suggest holding as high priority for discussion during third phase.]

3. {N} Statutes and Regulations Recommendation: Allow the incidental take of fully protected species following review and under specified circumstances

Implementation actions include:

- Only allow take for defined restoration projects or agreed upon beneficial projects.

  [Proposed change from individual SAG member]

- Reviewing status of fully protected species to determine the need for protection.

  [SAG member comment: This is not necessarily needed. If we create a take process for fully protected species it would be done on a case by case basis. Main concern is recommending something that will be costly and time intensive.]

- Eliminate fully protected status or alternatively list under CESA depending on status review.

  [SAG member comment: Elimination is controversial and I don't necessarily see a lot of support for it.]

Description: The fully protected species statute is outdated and needs addressing. Until the statutory change made in 2011, there was no way to allow for take of fully protected species. This caused challenges for projects throughout California and deterred habitat improvement projects that could benefit fully protected species because of the risk of take during the restoration project. While some would support abolishing the fully protected species statutes completely, broader support could be gained by moving species needing protection to CESA and eliminating it for those that don't warrant protection. However, DFG has stated that its workload would be significantly less it would be much easier for DFG if the statutes were eliminated, rather than requiring the review and listing of current fully protected species.

[Suggested edits in description paragraph from homework volunteers.]

[SAG member comment on original language: I don't agree with the last two sentences of the description.]

Ties to Strategic Vision: Goal 3, Objective 3; Goal 4, Objective 2