

# California Fish and Wildlife Strategic Vision Project

## Potential BRCC and SAG Governance Recommendations

*Revised January 19, 2012 @ 2015*

On January 11, 2012 during the California Fish and Wildlife Strategic Vision (CFWSV) Blue Ribbon Citizen Commission (BRCC) and Stakeholder Advisory Group (SAG) governance discussion topic meeting, five areas of potential recommendations were identified: Potential name change, mandates, Office of Spill Prevention and Response, defining potential success, and potential California Fish and Game Commission member qualifications and committees. Individual BRCC and SAG members, as well as participating California Department of Fish and Game (DFG) and California Fish and Game Commission (F&GC) employees, volunteered to develop text for potential recommendations in the five areas; this document captures the discussion that took place on January 18, 2012 regarding potential recommendations.

### Potential Name Change

***Potential Name Change Recommendation #1: Ask the DFG director to conduct a cost-benefit analysis for a potential DFG name change to inform further SAG discussions***

Description: While there was significant discussion among the SAG/BRCC about the pros and cons of changing DFG's name, additional information is still needed before a recommendation can be made. As such, the SAG/BRCC is requesting specific information regarding costs and benefits (tangible and intangible) associated with a possible name change in order to inform further SAG/BRCC deliberation.

#### Implementation Assessment

- Method: DFG administrative
- Timeline: Short-term (requested deadline of 60 days)
- Level of likely BRCC/SAG agreement: High

#### Description of Previous Discussions Related to a Name Change

There was general agreement during discussions that the name "California Department of Fish and Game" reflects the historical origins of DFG (and F&GC) as an agency primarily concerned with managing hunting and fishing. The existing name does not accurately reflect the modern, broad mandates of DFG to manage species and habitats for a variety of purposes both ecological and utilitarian. DFG manages seven major program areas: biodiversity conservation; hunting, fishing and public use administration; management of department public lands; enforcement; communications, education and outreach; spill prevention and response, and the California Fish and Game Commission. Clearly this range of responsibilities extends far beyond regulation of hunting and fishing as the current name implies. Notably, AB 2376 itself establishes a process to develop a California Fish and Wildlife Strategic Vision. DFG is supported by the California Wildlife Foundation and the National Fish and Wildlife Foundation. California is one of only a small number of states that continue to use the term "game" with most state resource management agencies having replaced the game with the more inclusive term "wildlife." Potential names that have been suggested include Department of Wildlife

Conservation and Management, Department of Fish and Wildlife, Department of Wildlife and Habitat, or Department of Wildlife.

Implementation benefits include:

- Improved alignment between DFG's name and the DFG's current broad range of duties (see above).
- Improved understanding from the wider public of the mission and work of DFG,
- Improved appreciation and increased support for DFG from the public.
- Future financial support (via future bond, sales tax or other funding measure on ballot, etc). Any broad scale funding mechanism will require significant public support. DFG's name (and the impression it gives of DFG's responsibilities being limited to managing hunting and fishing) would be a significant impediment to the success of any future public funding campaign. Polling efforts, leading up to the 21 campaign (November 2012), demonstrated that the term "wildlife" and protection of wildlife attracted wider support from diverse constituency groups than virtually any other term/concept.

Implementation drawbacks include:

- Questions whether a name change was necessary or a high priority for the strategic vision process.
- Potential public confusion between DFG and the USFWS if the DFG changed its name to use the term "wildlife".
- Costs involved in making a name change.
- A risk of alienating DFG's hunting constituency if a name change is viewed as agency movement away from the agency's historic support of hunting and fishing.

Miscellaneous: Some noted that both the Natural Resources Agency and CalFire recently changed their names and suggested exploration of why, how and any costs associated with these recent name changes could be helpful as DFG considers this issue. CalFire, in particular, structured its name change process to minimize costs by allowing a gradual replacement of the name and logo on vehicles, signs, buildings, and elsewhere. Also, much of the funding for "re-branding" could be potentially be raised outside DFG from diverse groups – further underscoring the breadth of support for a more inclusive term to communicate the work of the agency.

Implementation Assessment from Previous Discussions

- Method: The California Constitution does not mention the Department of Fish and Game, but DFG's name is established by statute. Specifically, Fish and Game Code section 700 states: "There is in the Resources Agency a Department of Fish and Game administered through the director." For this reason, a change in DFG's name would require the California State Legislature to amend the Fish and Game Code, but would not require any changes to the Constitution. Article 4, Section 20(b) of the California Constitution states: "There is a Fish and

Game Commission of 5 members...." Because the Constitution specifically defines the official title, it would require a constitutional amendment to change it.

- Timeline: Medium-term as it would require legislative action
- Level of likely BRCC/SAG agreement: Low

Ties to Strategic Vision: Goal 1, objectives 1 and 2; Goal 2, objectives 1 and 2; Goal 4, Objective 5

### **Potential Office of Spill Prevention and Response (OSPR) Recommendations**

Two recommendations are suggested for implementation in tandem to ensure the administrator of the DFG Office of Spill Prevention and Response is able to fulfill her or his duties under the California Government Code to effect "best achievable protection" of the coast from spills.

***Potential OSPR Recommendation #1: 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).***

Implementation recommendations include:

- Legislatively clarify that the California Fish and Game Code 704 does not apply to the OSPR administrator related to the California Government Code. Modify both Fish and Game Code Section 704 and Government Code Section 8670.6 to resolve conflict.
- Internal controls.

Description: The intent for this action is to resolve conflicting laws and conflicting practices within DFG. Since 1991 the California Government Code has provided that the OSPR administrator "... consistent with applicable civil service laws, shall appoint and discharge any officer, house staff counsel, or employee of the Administrator, as determined to be necessary, to carry out this article", and that "the Administrator shall ensure that he or she has available for support, either under direct employment, elsewhere in state government, or through contract for private or governmental services, personnel who are fully trained and familiar with oil spill response, containment, and cleanup technologies, procedures, and operations, risk evaluation and management, and emergency systems safety." [Government Code Section 8670.6]

Ten years later, in 2001 the Fish and Game Code was amended, to say that "Notwithstanding any other provision of law, the Director is the appointing power of all employees within the department, and all employees in the department are responsible to the Director for the proper carrying out of the duties and responsibilities of their respective positions" and that this is "declaratory of existing law." [Fish and Game Code Section 704] This presents a clear conflict with the statutory duties of the administrator as required by Government Code and has been known to undermine the administrator's

ability to implement effective staffing assignments during oil spill response.

#### Implementation Assessment

- Method: Legislative; Written internal administrative directives
- Timeline: Continuing
- Level of BRCC/SAG agreement: Unknown

Ties to Strategic Vision: Goal 3, Objective 3; Goal 4, Objective 1.

***Potential OSPR Recommendation #2: 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.***

Implementation recommendations include:

- Using an existing classification, perhaps similar to the California Department of Toxic Substances Control.
- Alternatively, create a civil service classification.

Description: The intent for this action is to ensure that the OSPR administrator could, if needed, select a particular enforcement staff member to serve as the State On-Scene Coordinator for a marine oil spill, e.g. perhaps based on needed experience and skill for a particular spill. DFG personnel could still be accessed in a large spill as a force multiplier.

Presently, Enforcement staff within DFG has a “straight-line” chain of command, which means the DFG chief of patrol ultimately controls assignments of DFG Law Enforcement Division staff.

#### Implementation Assessment

- Method: Administrative, perhaps budgetary
- Timeline: Continuing
- Level of BRCC/SAG agreement: High

Ties to Strategic Vision: Goal 3, Objective 3; Goal 4, Objective 1

#### **Potential Defining Success Recommendations**

***Potential Defining Success Recommendation #1: DFG develop performance metrics to define success, tie performance to DFG’s mission statement, and match DFG’s goals with funding (priorities).***

Description: Measuring success is not just a matter of staff development, such as job descriptions, work plans and performance evaluations, although staff development is important for enabling

employees to have a sense of purpose and to ensure that the employees are pursuing departmental goals, not individual goals.

In the big picture, defining how to measure success by developing high quality performance measures that are relevant, specific, consistent and timely will enable DFG to provide information that will assist in determining the extent to which DFG's many statutory responsibilities are being fulfilled and what resources it is using to do so.

From the Legislative Analyst's Office Report dated July 21, 2011 --

*Department of Fish and Game: Budget and Policy Overview*

"Planning and Evaluation of DFG's Activities"

"The Issue: The department issued a strategic plan in 1995 and has issued updates periodically. The plan identifies goals and strategies to meet those goals, but the plan's impact on the activities of the department is unclear. In addition, prior LAO analyses have identified a lack of evaluation of the effectiveness of those strategies and of the department's activities generally. The department has historically had difficulty providing information to the Legislature on the workload it is accomplishing, making it difficult to determine the extent to which the department's many statutory responsibilities are being fulfilled and what resources it is using to do so."

From the Legislative Analyst's Office Report dated September 14, 2011

*Fish and Wildlife Agency Structures and Best Practices: A Study of Florida, Texas, Washington and New York*

"Program Evaluation Requires High-Quality Performance Measures"

"Criteria for high quality performance measures are relevance, specific, consistency and timeliness. Identifying measures that are unambiguous and relevant to the desired outcomes can be particularly challenging for fish and wildlife agencies... Current performance measures do not often meet the criteria that they be relevant and specific. Using multiple measures to track a single objective can mitigate the negative effects of poor measures."

Implementation Assessment:

- Method: Administrative
- Timeline: Short-term
- Cost: Relatively low (may result in better reception from the legislature to funding requests and possibly even increased funding support from the legislature)
- Level of Likely BRCC/SAG Agreement: High

Ties to Strategic Vision: ?

## Potential Fish and Game Commission Member Qualifications and Committees Recommendations

### **Potential F&GC Member Qualifications Recommendation #1: Define a set of qualifications for the Governor and California State Senate to consider when making and reviewing appointments to the F&GC**

***Vision: Successful natural resource stewardship will depend upon a capable and representative California Fish and Game Commission.***

Proposed language: The Governor when making appointments and the California State Senate when confirming said appointments shall consider the following:

- A. The degree to which the appointee will enhance the diversity of background and geographic representation of the Commission
- B. The appointee's demonstrated interest and background in wildlife and natural resources
- C. The appointee's previous experience in public policy decision making
- D. Potential conflicts of interest of the appointee with subject matter under the jurisdiction of the F&GC
- E. A commitment by the appointee to both prepare for and attend meetings and subcommittee meetings of the F&GC
- F. The diversity of knowledge of natural resource issues including outdoor recreation and related scientific disciplines

Description: The California State Constitution decrees the existence of FG&C, its size (five members), terms (six years), and appointment authority (Governor with California State Senate approval). [See California State Constitution, Article 4(b) below.] The California State Constitution is silent, however, regarding the qualifications of the appointed members. The scope and responsibilities of F&GC have significantly expanded over the years as the size and diversity of California's population has grown. The five volunteer F&GC members are expected to make complex public policy and biological decisions on behalf of all Californians based on volumes of often very technical information. Creating a defined set of qualifications including education, expertise, and experience to help guide the Governor's selection of members and the senate's confirmation process may elevate the discussion and result in decisions that improve the public's and legislature's confidence. A Little Hoover Commission report [1990] specifically noted this lack in that there was "no clear publicly understood criteria for selection and appointment of Fish and Game Commissioners."

*"CALIFORNIA CONSTITUTION, ARTICLE 4 (b) There is a Fish and Game Commission of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 6-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. The Legislature may delegate to the commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. A member of the commission may be removed by concurrent resolution adopted by each house, a majority of the membership concurring."*

Implementation Assessment:

- Method: Legislative or administrative
- Timeline: Short-term
- Level of likely BRCC/SAG agreement: High to moderate / top 1-3

Ties to Strategic Vision: Goal 1, Objective 5; Goal 3, objectives 6 and 7

***Potential F&GC Member Qualifications Recommendation #2: Create greater stakeholder input and exchange, and a better understanding of issues by F&GC members and all involved prior to formal F&GC hearings***

Implementation recommendations include:

- Expand use of (sub)committees (e.g., science)
- Hold issue-specific public workshops

Description: The five volunteer members of the F&GC are expected to make complex public policy decisions on numerous and diverse issues at their meetings that occur only once per month. Because so much must be accomplished in such a short time at these meetings, there is limited opportunity for stakeholders and the public to be heard, and the potential for constructive interaction between F&GC members and the public is severely constrained. Currently, two (sub)committees at F&GC have proven successful—marine resources, which is focused on marine issues and is mandated by law, and Al Taucher Preserving Hunting and Fishing Opportunities, which was created administratively by F&GC to address the concerns of hunters and fishermen. Each of these (sub)committees has one or two assigned F&GC members, allowing them to build a better understanding and expertise in the area of the (sub)committee. In addition, stakeholders are appeased by participating in a process where all can be heard outside of a formal public hearing where time is compressed. These outcomes also could be accomplished with focused, issue-specific public workshops on controversial issues that are coming before F&GC if an ongoing (sub)committee process is infeasible or unnecessary.

Implementation Assessment:

- Method: F&GC/DFG administration and/or legislative
- Timeline: Short-term if administrative; medium-term if legislative
- Level of Likely BRC/SAG agreement: High

Ties to Strategic Vision: Goal 1, objectives 2, 3, 6 and 7; Goal 2, Objective 7; Goal 3, objectives 2, 5, 6 and 7 (*need to reduce to more specific goals and objectives to be achieved*)